TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 329

UNITED STATES, ETC., ET AL., PETITIONERS.

vs.

OREGON, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OREGON

PETITION FOR CERTIORARI FILED AUGUST 16, 1960
CERTIORARI GRANTED NOVEMBER 7, 1960

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[fol. 1]

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MULTNOMAH DEPARTMENT OF PROBATE

No. 76207

IN THE MATTER OF THE ESTATE

OF

ADAM B. WARPOUSKE, Deceased.

ORDER APPOINTING ADMINISTRATOR—March 26, 1956

This matter coming on for hearing before the Court, The Honorable William L. Dickson presiding, upon the petition of Portland Trust Bank, a corporation, for an order herein appointing Portland Trust Bank, a corporation, as Administrator of the estate of Adam B. Warpouske, deceased, and the Court, having examined the said Petition, and being now fully advised in the premises, FINDS:

Adam B. Warpouske died intestate in the City of Portland, in Multnomah County, Oregon, on the 19th day of March, 1956. At the time of his death, he was of the age of sixty-eight years.

The said decedent has left no known heirs within the State of Oregon.

At the time of his death, and for more than one year prior thereto, the decedent was a citizen, resident and inhabitant of the City of Portland, Multnomah County, Oregon. He has left estate consisting of personal estate within Multnomah County, Oregon, and within the jurisdiction of this Court.

The Petitioner, Portland Trust Bank, is a corporation, organized and existing under the laws of the State of Oregon, with its principal office and place of business in Portland, in Multnomah County, Oregon. It is authorized to act, and it is engaged, among other things, in the business of acting, as administrator of the estates of persons

deceased. It has on deposit with the Superintendent of Banks of the State of Oregon that deposit required under the provisions of Section 709-030, O.R.S. and it is there-
[fol. 2] fore qualified to act as administrator of the estates of persons deceased without giving special bond upon its appointment in each such instance. The Petitioner, Portland Trust Bank, is a principal creditor of the deceased in that it has been and is now acting as Guardian of the estate of the said deceased, as an incompetent, and that it has unliquidated claims against the estate of the deceased for payment of its fees and expenses in guardianship.

The Petition of Portland Trust Bank for appointment as Administrator, now on file herein, does not specifically designate by name an heir or heirs of the decedent, and for reason of such circumstance the State Land Board of the State of Oregon is an interested party in this proceeding, and the Petition of Portland Trust Bank, now on file herein, discloses, through proof of service annexed thereto, that copy of such Petition has been served upon the State Land Board of the State of Oregon in the manner provided under sub-section (2) of Section 115.310, O.R.S.

The Petitioner, Portland Trust Bank, a corporation, desires appointment as Administrator of the estate of the said Adam B. Warpouske, deceased.

THEREFORE, the facts being as aforesaid, it is at this time

ORDERED that Portland Trust Bank, a corporation, be and it is appointed Administrator of the estate of Adam B. Warpouske, deceased, and that Letters of Administration upon the estate of the decedent issue to the said Portland Trust Bank forthwith.

DATED this 26th day of March, 1956.

/s/ William L. Dickson
Judge

[fol. 3] (File Endorsement Omitted)

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MULTNOMAH
DEPARTMENT OF PROBATE

(Title Omitted)

FINAL ACCOUNT—Filed Feb. 18, 1957

TO THE HONORABLE, THE JUDGE of the above entitled Court:

Comes now PORTLAND TRUST BANK, Administrator of the Estate of Adam B. Warpouske, deceased, and makes and files this, its Final Account of its proceedings had and done in administration of the above entitled estate and shows to the Court:

Attached hereto as Exhibit "A" is a statement wherein in detail are disclosed all moneys coming to the hands of your Administrator for the account of this estate, with the dates of receipt by your Administrstor, the sources of the several receipts, and the amounts thereof. Such statement further discloses in detail all moneys expended by your Administrator for the account of this estate with a showing in detail of the dates of payment, the identities of the payees, the purposes for which paid, and the amounts, with reference in each instance to the proper voucher supporting the payment, which vouchers are separately filed herewith.

Your Administrator has sold at private sale for cash, conformably to the Order of the Court, entered in the matter of this estate on January 14, 1957, the clothing and personal effects of the decedent and the violin and case of the decedent; and the proceeds are accounted for in the statement, Exhibit "A" hereto. As the result of such sale, all of the assets of this estate are now in money form and the total of such funds of this estate, now in the hands of your Administrator, is the sum of $22,018.77.

Based upon the appraised value of the assets of this estate, disclosed by Inventory and Appraisement herein [fol. 4] to be in the sum of $23,056.02, but actually in the

sum of $22,056.02, due to the fact that an error of $1,000.00 in addition, occurring in tabulation of inventoried and appraised values in said Inventory, incorrectly reaches such figure of $23,056.02, the statutory fees of your Administrator herein are in the sum of $791.68. Your Administrator has employed Messrs. Middleton & Kuykendall, attorneys at law, to represent your Administrator as its counsel in administration of this estate, and a like sum of $791.68 is proper and reasonable to be allowed to your said Administrator for payment to its said counsel as their fees for services rendered in administration.

Prior to the death of the decedent herein, your Administrator, then acting as Guardian of the Estate of Adam B. Warpouske, incompetent, did make and enter into a certain contract with American Archives Association, a corporation organized and existing under the laws of the State of Delaware, whereunder the said American Archives Association agreed to perform certain services and to pay certain costs incident to securing payment to the deceased ward of an estate in inheritance to which American Archives Association had learned the decedent was entitled. Such contract was made and entered into by your Administrator, acting in its then capacity as Guardian of the estate of Adam B. Warpouske, incompetent, under Order of this Court entered on March 14, 1956, in the matter of the guardianship estate of Adam B. Warpouske, incompetent.

Pursuant to the terms of the contract aforesaid, American Archives Association has supplied information and has done and performed work and has paid costs as provided by the terms of such contract, with the result that there has come to the hands of your Administrator, from the estate of Steve J. Warpechowski, deceased, deceased brother of the decedent herein, as administered in the County Court of Calumet County, Wisconsin, the total sum of $21,525.27. Out of the estate of Steve J. Warpechowski, deceased, and before transmittal to the hands of your Administrator of such sum of $21,525.27, there had been paid, as costs chargeable to American Archives Association under the contract aforesaid, a total of $2,205.60, which for purposes of computation of the

fee payable to American Archives Association under the contract aforesaid, should be added to the funds actually [fol. 5] received by your Administrator in the sum of $21,525.27, resulting in a gross of $23,730.87, which sum represented the actual distributable values from the estate of Steve J. Warpechowski, deceased, before there were paid therefrom the sum of $2205.60 chargeable to American Archives Association.

Based upon such total value of $23,730.87 resulting from the estate of Steve J. Warpechowski, deceased, in gross, the said American Archives Association is entitled under its contract aforesaid to payment of the sum of $7,910.29 from which must be deducted the $2205.60 already paid for its account from the Wisconsin administration, leaving $5,704.69 still payable to said American Archives Association under the terms of the contract aforesaid, which amount constitutes a claim against this estate, under the contract aforesaid, by American Archives Association.

American Archives Association has agreed with your Administrator that the computations hereinbefore detailed are correct, and that such sum of $5,704.69 is the amount actually payable from this estate to American Archives Association.

Copy of the Contract with American Archives Association, hereinbefore referred to, and as entered into on March 16, 1956, in the matter of the guardianship estate of Adam B. Warpouske, incompetent, is attached to this accounting as Exhibit "B" and is by reference made a part hereof.

The total of $2205.60 chargeable to American Archives Association in the course of the Wisconsin administration of the estate of Steve J. Warpechowski, deceased, is arrived at as follows:

(a) Administrator's fees in the Wisconsin administration, allowed by the Court were in the total amount of $1,090.12, whereas the normal base fee in Wisconsin was $817.96. The difference, $272.16, represents allowance for unusual services in determination of heirship, properly chargeable to American Archives Association.

(b) Attorney's fees in probate in the Wisconsin administration of the estate of Steve J. Warpechowski, deceased, were allowed by the Court and paid in the sum of [fol. 6] $2,850.00, whereas, under the applicable probate practice in Wisconsin, normal fees for counsel would have been $916.56. The difference, $1,933.44, represented compensation for unusual services performed in securing proof, proving and establishing heirship of the decedent in this estate to the estate of Steve J. Warpechowski, deceased. Such compensation for unusual services is properly chargeable to American Archives Association under its Contract aforesaid.

The total of such two differences, $272.16 and $1,933.44, represents the $2,205.60 with which American Archives Association is charged as above stated.

Claims against this estate and expenses of administration unpaid, remaining to be paid from the present cash balance of this estate, in the sum of $22,018.77, are:

American Archives Association	$5,704.69
Good Samaritan Hospital	198.58
Multnomah County Hospital	796.25
Advance by Middleton & Kuykendall for certified copy of Letters of Administration	.75
Fees in probate of your Administrator	791.68
Fees in probate of Messrs. Middleton & Kuykendall, attorneys for your Administrator	791.68
Cost of Publication of Notice of Hearing upon Final Account	8.00
Total	$8,291.63

After payment of the aforesaid claims and costs of administration, there will remain on hand in the hands of your Administrator, for distribution to those entitled, the sum of $13,727.14.

The decedent, Adam B. Warpouske, lived in a rooming house in the City of Portland, in Multnomah County, Oregon. He was there stricken with a heart seizure and paralytic stroke; and he was taken from his rooming house to Good Samaritan Hospital where he was hospitalized, resulting in the claim of $198.58 above mentioned.

[fol. 7] Because it appeared that he was without funds, or substantially so, he was transferred from Good Samaritan Hospital to the Multnomah County Hospital where he was hospitalized, resulting in the claim of Multnomah County Hospital above mentioned. From the Multnomah County Hospital he was transferred, early in March 1956, to the United States Veterans Hospital in Portland, Oregon, where he died on March 19, 1956. Your Administrator is informed and believes and alleges the fact to be that the decedent Adam B. Warpouske, was unconscious or semi-conscious at the time of his transfer from Multnomah County Hospital to United States Veterans Hospital and that at the time of such transfer he was not, in any sense or in any degree, in possession of his mental faculties.

The decedent, Adam B. Warpouske, has left no known heirs.

There has been filed with your Administrator the claim of H. B. Higley, Administrator of Veterans Affairs, for payment and assignment of the personal property of this estate to the United States of America as trustee for the sole use and benefit of the General Post Fund under the provisions of Section 17, et seq., Title 38, U.S.C.A.

The Federal statutes under which such claim for distribution is made are predicated upon contract as between the United States of America and a decedent veteran who shall die within a United States Veterans Hospital, being a patient therein, it being provided in substance that the contract arises when the veteran shall enter the hospital. Your Administrator points out to the Court that the decedent in this estate was, at the time he entered the United States Veterans Hospital in Portland, Oregon, either unconscious or, at the best, without possession of his mental faculties which circumstance may or may not have effect in law as affording a base for application in effect of the Federal statutes under which the claim for distribution aforesaid is presented. This matter is submitted to the court for determination.

Should it be determined that the United States of America, as trustee for the sole use and benefit of the [fol. 8] General Post Fund, is not entitled to distribu-

tion of the personal estate of the decedent, then under the provisions of Section 111.030, Oregon Revised Statutes, the estate of the decedent available for distribution escheats to the State of Oregon.

All taxes imposed by the Personal Income Tax Act of 1953, as amended, being Sections 316.005 et seq., Oregon Revised Statutes, upon your Administrator, in its capacity as such, which have been payable, have been paid. Certificate of release by the State Tax Commission of the State of Oregon, evidencing such payment, will be filed herein prior to the entry of Order closing this estate.

All taxes due and owing from the decedent and from the Administrator herein or which may be collected from either of them by virtue of the assessment and taxation laws of this State have been paid, excepting that until the Court shall determine the identity of destination of the distributable values of this estate and related inheritance tax obligations, it will not be possible to determine whether or not inheritance tax is payable to the State of Oregon out of this estate and, if so, in what amount.

Administration of this estate is now complete and the same is ready for closing and distribution.

WHEREFORE, your Administrator prays the Order of this Court setting this Final Account for hearing upon a day certain and directing your Administrator to publish notice of the hearing upon and the determination of this Final Account for the time and in the manner provided by law in the Daily Journal of Commerce, which is a newspaper of general circulation, printed and published in Multnomah County, Oregon; and that upon the hearing upon this Final Account, the same be approved as filed and that your Administrator be directed to pay the claims against this estate and the unpaid costs of administration hereinbefore detailed as requiring payment, and that your Administrator be directed to distribute the remainder of the personal property of this estate, being money in the sum of $13,727.14 hereinbefore mentioned, less related inheritance tax, if any be found payable, to the United [fol. 9] States of America as Trustee for the sole use and benefit of the General Post Fund through the hands of a duly qualified officer of the United States Government,

or to the State of Oregon; and further directing that upon the filing of appropriate vouchers disclosing payment of the costs of administration yet to be paid as above detailed and distribution of the remaining personal property assets of this estate in accordance with the terms of the Court's order upon such Final Account in such particular, then that a further and final Order enter herein discharging your Administrator and closing this estate.

PORTLAND TRUST BANK

By /s/ L. B. Hartley
Trust Officer
ADMINISTRATOR

STATE OF OREGON)
County of Multnomah) ss

I, L. B. HARTLEY, being first duly sworn, say that I am Trust Officer of Portland Trust Bank, Administrator of the estate of Adam B. Warpouske, deceased; I have examined the foregoing FINAL ACCOUNT in the matter of said estate and I know the contents thereof, and the same is true.

/s/ L. B. Hartley

Subscribed and sworn to before me on this 15 day of February, 1957.

/s/ J. S. Middleton
Notary Public for Oregon
[SEAL] My Commission expires: May 1, 1960

[fol. 10] (File Endorsement Omitted)

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MULTNOMAH IN PROBATE

(Title Omitted)

ANSWER OF THE STATE LAND BOARD—Filed March 20, 1957

Comes now the State of Oregon, acting by and through the State Land Board, and admits, denies and alleges as follows:

I

Admits the allegations of paragraphs I, II, III, IV and V of the Claim for Personal Property in Estate herein filed by the Administrator of Veterans' Affairs.

II

Denies the allegations contained in paragraph VI.

WHEREFORE, the State of Oregon, acting by and through the State Land Board, having fully answered the Claim of the Administrator of Veterans' Affairs prays that said claim be denied.

ROBERT Y. THORNTON
Attorney General of Oregon

/s/ Catherine Zorn
Assistant Attorney General
Attorneys for the State
Land Board

[fol. 11] Duly Sworn to by E. T. Pierce
(Jurat Omitted in Printing)

Certificate of Service (Omitted in Printing)

[fol. 12] (File Endorsement Omitted)

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MULTNOMAH IN PROBATE

(Title Omitted)

PETITION FOR FINDING AND ORDER OF ESCHEAT—Filed March 20, 1957

Comes now the State of Oregon, acting by and through the State Land Board, and alleges as follows:

I

That Adam B. Warpouske died intestate without known heirs on March 19, 1956, leaving an estate consisting of personal property.

II

That at the time of his death the decedent was a resident of Multnomah County, Oregon.

III

That petitioner is informed and believes and therefore alleges that prior to his death the decedent was stricken with a heart seizure and paralytic stroke and was taken to Good Samaritan Hospital where he was hospitalized; that he was transferred from Good Samaritan Hospital to the Multnomah County Hospital, and that from the Multnomah County Hospital he was transferred early in March 1956 to the United States Veterans Hospital in Portland, Oregon, where he died on March 19, 1956.

IV

That your petitioner is informed and believes and therefore alleges that at the time of his transfer from Multnomah County Hospital to the Veterans Hospital he was unconscious or semi-conscious, and was not in any sense

[fol. 13] or degree possessed of his mental faculties or of mental capacity enabling him to contract.

V

That on the 9th day of March, 1956, the Portland Trust Bank, an Oregon corporation, was appointed guardian of the estate of Adam B. Warpouske, and that said decedent remained under guardianship until his death.

VI

That petitioner is informed and believes and therefore alleges that said decedent was transferred from Multnomah County Hospital to the Veterans Hospital without the knowledge, consent or authority of the guardian and without any order of the court authorizing his transfer or admission to the Veterans Hospital, or his treatment therein.

VII

That no contract arose or was created under the provisions of or by virtue of § 17 et seq., Title 38, U.S.C.A., by reason of decedent's transfer to the United States Veterans Hospital or his treatment therein at the time of his death.

VIII

That said decedent's estate has escheated to the State of Oregon for the benefit of the Common School Fund subject to the rights, if any, of the State of Wisconsin in and to said estate.

WHEREFORE, your petitioner prays for an order as follows:

1. That Adam B. Warpouske died on March 19, 1956, in Multnomah County, Oregon, intestate without known heirs;

2. That the clear proceeds derived from said estate escheated to and became the property of the State of Oregon on the date of the death of said decedent subject [fol. 14] to the rights, if any, of the State of Wisconsin, in and to said estate.

ROBERT Y. THORNTON
Attorney General of Oregon

/s/ Catherine Zorn
Assistant Attorney General
Attorneys for Petitioner
State of Oregon, acting by and through the State Land Board

Duly Sworn to by E. T. Pierce
(Jurat Omitted in Printing)

Certificate of Service (Omitted in Printing)

[fol. 15] • • •

[fol. 16] (File Endorsement Omitted)

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MULTNOMAH DEPARTMENT OF PROBATE

(Title Omitted)

ANSWER TO THE PETITION FOR FINDING AND ORDER OF ESCHEAT—Filed May 1, 1957

Comes now the United States of America, by C. E. Luckey, United States Attorney for the District of Oregon, and Victor E. Harr, Assistant United States Attorney, and for answer to the petition for finding and order of escheat of the State of Oregon, acting by and through the State Land Board, admits, denies and alleges as follows:

I

Admits the allegations of Paragraphs I and II of said petition.

II

For answer to Paragraph III of said petition, claimant United States of America admits that decedent, Adam B. Warpouske, was transferred to the United States Veterans Hospital in Portland, Oregon on March 1, 1956 from the Multnomah County Hospital; that he died in the Veterans Hospital on March 19, 1956; admits that said decedent had had a paralytic stroke prior to his admission into the Veterans Hospital, but lacks information as to the remaining allegations in said paragraph and therefore denies the same and the whole thereof.

III

Admits the allegations of Paragraphs IV and V of the petition.

IV

Answering Paragraph VI of said petition, claimant admits the allegations therein contained, except that claimant denies that the guardian did not approve or acquiesce in the treatment afforded decedent at the Veterans Hospital of the United States of America.

V

Denies the allegations contained in Paragraphs VII and VIII of said petition.

[fol. 17] For a first, further and affirmative defense to the petition herein, and by way of presenting its claim herein, the United States of America alleges as follows:

I

That Adam B. Warpouske, a veteran of the armed forces of the United States, died intestate while a patient in the Veterans Administration Hospital in Portland, Oregon, on the 19th day of March 1956, and while being furnished care and treatment therein by the Veterans Administration, leaving no spouse, next-of-kin or heirs entitled to his personal property under the laws of the State of Oregon, where he was domiciled.

II

That the Portland Trust Bank is the duly appointed, qualified and acting Administrator of the Estate of the decedent, Adam B. Warpouske, having been appointed Administrator of said Estate by Order of the above-entitled Court on the 26th day of March 1956.

III

That the remaining personal property of the decedent herein, after payment of just claims and costs of administration, consisting of cash of the approximate amount of $13,720.14, is now in the possession of the Portland Trust Bank in its capacity as Administrator of the Estate of said decedent.

IV

That by the terms of the Act of Congress of June 25, 1910 (36 Stat. 736), 24 USC 136, as amended by the Act of December 26, 1941 (55 Stat. 868), 38 USC 17-17j, the personal property as to which said decedent died intestate, including all money and choses in action owned by said decedent at the time of his death and not disposed of by will or otherwise, immediately vested in and became the property of the United States, as Trustee, for the sole use and benefit of the General Post Fund.

V

That under the facts herein set forth and the applicable law, including Article VI, Clause 2, of the Constitution of [fol. 18] the United States of America, the United States is entitled to the personal property of decedent, including all monies and choses in action, for the trust purpose described in the said General Post Fund Statute, its rights being superior to any that may be asserted by the State of Oregon under its laws relating to the escheat of decedents' estates.

WHEREFORE, claimant United States of America prays that the petition for finding and order of escheat of the State of Oregon, acting by and through the State Land Board, be dismissed and held for nought and that a decree enter herein authorizing and directing the Portland Trust Bank, decedent's administrator herein, to pay and deliver over to the United States of America, the balance of the personal estate of the said Adam B. Warpouske remaining in the Administrator's possession after payment of all valid claims of creditors and deduction of the reasonable and proper costs of expenses of the administration, but without deduction on account of any inheritance or other taxes which may be claimed by the State of Oregon.

C. E. LUCKEY
United States Attorney
District of Oregon

/s/ Victor E. Harr
VICTOR E. HARR
Assistant United States Attorney
Of Attorneys for Claimant
United States of America

Duly Sworn to by Victor E. Harr
(Jurat Omitted in Printing)

Certificate of Service (Omitted in Printing)

[fol. 19] • • •

[fol. 20] (File Endorsement Omitted)

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MULTNOMAH
DEPARTMENT OF PROBATE

(Title Omitted)

REPLY TO ANSWER OF CLAIMANT UNITED STATES OF AMERICA—Filed May 10, 1957

Comes the State of Oregon, acting by and through the State Land Board, and for reply to the answer of claimant United States of America admits, denies and alleges as follows:

I

Admits the allegations of paragraphs I, II and III of the first, further and affirmative defense of claimant United States of America.

II

Denies the allegations contained in paragraphs IV and V of said claimant's first, further and affirmative defense.

WHEREFORE the State of Oregon, acting by and through the State Land Board, prays that a decree be entered as prayed for in the petition of escheat of said State Land Board on file herein.

ROBERT Y. THORNTON
Attorney General

/s/ Catherine Zorn
Assistant Attorney General

Of Attorneys for Petitioner, State of Oregon, acting by and for the State Land Board

Duly Sworn to by E. T. Pierce
(Jurat Omitted in Printing)

Certificate of Service (Omitted in Printing)

[fol. 21] * * *

[fol. 22] (File Endorsement Omitted)

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MULTNOMAH IN PROBATE

(Title Omitted)

CLAIM FOR PERSONAL PROPERTY IN ESTATE—
Filed Aug. 13, 1957

To the Portland Trust Bank as Administrator of the Estate of Adam B. Warpouske, Deceased:

COMES Now H. V. Higley, Administrator of Veterans Affairs, by his duly appointed attorney, Albert T. Elott, Chief Attorney, Veterans Administration Regional Office, Lincoln Building, Portland, Oregon, and demands the personal property in the estate of the above named deceased person upon the grounds and for the reasons as follows:

I.

That the said Adam B. Warpouske was a veteran of the United States armed forces.

II.

That said Adam B. Warpouske died intestate on March 19, 1956, at the Veterans Administration Hospital, Portland, Oregon, where he had been admitted as a veteran and where he was being furnished care and treatment therein by the Veterans Administration at the time of his death.

III.

That the said decedent left an estate consisting of personal property.

IV.

That at the time of his death, the said Adam B. Warpouske was a resident and inhabitant of Multnomah County, State of Oregon.

V.

That said Adam B. Warpouske did not leave surviving him any spouse, next of kin or heirs at law capable of inheriting under the laws of his domicile.

[fol. 23]

VI.

That the personal property which Adam B. Warpouske owned, or owned an interest in, and to which he died intestate, vested in & or escheated to the United States at the time of his death by virtue of Section 17 et seq., & 450 Title 38, U.S.C.A., and is the property of the United States as trustee for the sole use and benefit of the General Post Fund, and demand is hereby made by the United States therefor.

H. V. Higley,
Administrator of Veterans Affairs,

By /s/ Albert T. Elott
Albert T. Elott, Chief Attorney
Veterans Administration Regional Office
208 S. W. Fifth Avenue
Portland 4, Oregon

Duly Sworn to by Albert T. Elott
Jurat Omitted in Printing

[fol. 24] CIRCUIT COURT OF OREGON
FOURTH JUDICIAL CIRCUIT

Department Number Seven
PORTLAND

William L. Dickson
Judge

March 28, 1958

(Title Omitted)

DECISION—March 28, 1958

Mr. Victor Harr
Assistant District Attorney
United States Court House
Portland 4, Oregon

Re: Estate of ADAM B. WARPOUSKE, Deceased
Multnomah County Probate No. 76-207

Dear Mr. Harr:

After carefully considering the evidence before the Court and the Briefs of counsel, this Court has concluded and finds:

That the deceased Adam B. Warpouske was mentally ill for many years prior to December 26, 1941, and continued to be mentally ill from said date until his death; That he was not mentally competent to understand the consequences of his acceptance of hospitalization in the Veterans Administration Facilities or to enter into any contract respecting such hospitalization or the consequences thereof, and in particular he was not mentally competent to enter into any agreement, either by word or deed, whereby his undisposed personalty would vest in the United States as Trustee for the General Post Fund;

That unless the deceased, either by word or deed, entered into a valid contract, the provisions of Section 17, Title 38, United States Code, cannot and do not control the disposition or vesting of his personalty at the time of his death;

That the administrative expenses in the Guardianship Estate of Adam B. Warpouske (Multnomah County [fol. 25] Clerk's No. 76000) should be borne proportionately by the assets derived from United States Government pension funds and the assets derived from the decedent's brother in Wisconsin;

And that that part of the decedent's estate which represents the balance of funds derived from Veterans Compensation escheats to the Federal Government by virtue of Section 450 of Title 38, U.S.C., and that the remainder of the estate escheats to the State of Oregon for the benefit of the Common School Fund.

Counsel for the respective parties are respectfully requested to collaborate in making the necessary computations concerning the sharing of the guardianship estate expenses as hereinabove indicated, and in preparing and presenting the appropriate decree consonant with this opinion.

Respectfully yours,

/s/ William L. Dickson
WILLIAM L. DICKSON
Circuit Judge
Department of Probate

Duplicate Originals to:

Miss Catherine Zorn
Assistant Attorney General
Salem, Oregon

Middleton & Kuykendall
Attorneys at Law
Pacific Building
Portland 4, Oregon

[fols. 26-27] • • •

[fol. 28] (File Endorsement Omitted)

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MULTNOMAH DEPARTMENT OF PROBATE

(Title Omitted)

FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER OF ESCHEAT AND DECREE DETERMINING INTERESTS IN ESTATE—May 6, 1958

This matter came on for hearing before this court on August 12, 1957, upon the claim of the United States Veterans' Administrator for the personal property in this estate and the petition of the State of Oregon, acting by and through the State Land Board, for the escheat of this decedent's estate. The Portland Trust Bank, administrator of the estate, appeared by its attorney, J. S. Middleton; the United States Veterans' Administrator appeared by its attorney, Victor E. Harr, Assistant United States District Attorney; and the State of Oregon appeared by its attorney, Catherine Zorn, Assistant Attorney General of Oregon.

The United States of America, through the Veterans' Administrator, and the State of Oregon, acting by and through the State Land Board, having asserted their respective claims, and evidence, arguments of counsel and briefs having been submitted by the respective parties, the court finds and concludes as follows:

FINDINGS

1. The decedent, Adam B. Warpouske, was mentally ill for many years prior to December 26, 1941, and continued to be mentally ill from said date until his death.

2. On a number of occasions prior to March 1, 1956, the decedent, Adam B. Warpouske, was hospitalized in various hospitals operated in various places in the United [fol. 29] States of America by the United States Veterans' Administration.

3. The said Adam B. Warpouske was not mentally competent to understand the consequences of his acceptance of hospitalization in hospitals operated and conducted by the United States Veterans' Administration, nor was he competent to enter into any contract respecting any such hospitalization; and in particular, he was not mentally competent to enter into any agreement, either by word or deed, whereby his undisposed personalty would vest in the United States of America as trustee for the General Post Fund.

Conclusions

1. Unless the deceased, either by word or by deed, entered into a valid contract upon entry into a hospital conducted by the United States Veterans' Administration, the provisions of § 17, Title 38, United States Code, cannot and do not control the disposition or vesting of his personalty at the time of his death.

2. That part of the decedent's estate which represents the balance of funds derived from United States Veterans' compensation should be charged with its proportionate share of the administration expenses in the guardianship estate of Adam B. Warpouske, incompetent, Multnomah County Clerk's Filing No. 76000; and after such charge of proportionate expenses, the remainder of that part of the decedent's estate, which represents the balance of funds derived from compensation paid by the United States Veterans' Administration, shall be distributed to the United States of America under the provisions of § 450, Title 38, United States Code.

3. The remainder of the estate of the decedent escheats to the State of Oregon for the benefit of the Common School Fund and so is distributable to the State Land Board of the State of Oregon.

[fol. 30] 4. A table delineating the amounts in dollars to be distributed to the United States of America and to the State Land Board of the State of Oregon, under the foregoing conclusions of law, is annexed hereto as Exhibit "A" and is by reference made a part hereof; and the result of such table is that out of the sum of $13,727.14, now on hand as the assets of this estate, the sum

of $971.47 shall be distributed to the United States of America, with the remaining sum of $12,755.67, distributable to the State Land Board of the State of Oregon.

ORDER OF ESCHEAT AND DECREE DETERMINING INTERESTS IN ESTATE

Based upon the foregoing findings and conclusions, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the claim of the United States Veterans' Administrator for the personal property in this estate be denied, except as to so much of the clear proceeds thereof as was derived from unused federal veterans' pension funds paid to the decedent Adam B. Warpouske;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the petition of the State of Oregon for order and finding of escheat be hereby granted, except as to so much of the estate of the deceased as was derived from unused federal veterans' pension funds;

IT IS ORDERED, ADJUDGED AND DECREED that the expenses of administration of the guardianship estate of Adam B. Warpouske (Multnomah County Clerk's Filing No. 76000) be borne proportionately by the assets derived from the decedent's unused federal veterans' pension funds and the assets derived from the estate of the decedent's deceased brother in Wisconsin;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED:

1. That Adam B. Warpouske died on March 19, 1956. in Multnomah County, Oregon, intestate without heirs;

2. That the clear proceeds derived from his estate, [fol. 31] except as to such portion thereof comprising unused federal veterans' pension funds, have escheated to and become the property of the State of Oregon;

3. That such portion of the decedent's estate as was derived from unused federal veterans' pension funds, less the prorated cost of guardianship and decedent's estate administration expenses, have inured to the United States of America by virtue of § 450, Title 38, United States Code;

4. That the administrator of the estate herein deliver the clear proceeds of the said respective portions of the decedent's estate to the State Land Board of the State of Oregon for the benefit of the Common School Fund and to the Veterans' Administration of the United States of America to be credited as provided by law.

Let this Order be entered Nunc Pro Tunc as of May 6, 1958.

Dated this 6 day of May, 1958.

/s/ William L. Dickson
Judge

[fol. 32] EXHIBIT "A" TO FINDINGS, ETC.

Decedent's Total Assets		
Assets derived from decedent's deceased brother's estate in Wisconsin	$21,525.27	
Clothing	3.00	
Violin	25.00	
		$21,553.27
Assets in guardianship estate derived from unused federal veterans' pension funds		
Bonds	1,000.00	
Interest	134.25	
		1,134.25
Total assets of guardianship and decedent's estates		$22,687.52
State's proportionate share of assets		
$22,687.52 : $21,553.27 = 95%		
United States' proportionate share of assets		
$22,687.52 : $ 1,134.25 = 5%		
Expenses of Guardianship		
Attorney's fee	500.00	
Guardian's fee	125.00	
Clerk's fee	1.50	
		626.50
State's proportionate share of expenses 95% of $626.50	595.18	
United States' proportionate share of expenses 5% of $626.50	31.32	
		626.50

[fol. 33]

Expenses of Decedent's Estate	$ 8,333.88	
Less fees of American Archives Association chargeable against collection of assets from deceased brother's estate	5,704.69	
Actual expenses of administration of decedent's estate		$ 2,629.19
State's proportionate share of decedent's estate administration		
95% of $2,629.19	2,497.73	
United States' proportionate share of decedent's estate administration		
5% of $2,629.19	131.46	
Total		2,629.19
State's proportionate share of administration of decedent's estate	2,497.73	
State's proportionate share of administration of guardian's estate	595.18	
State's proportionate share of expenses		3,092.91
United States' proportionate share of administration of decedent's estate	131.46	
United States' proportionate share of administration of guardianship estate	31.32	
United States' proportionate share of expenses		162.78

[fol. 34]

State's portion of assets of decedent's estate		$21,553.27
Less:		
State's proportionate share of expenses, and American Archives Association fee	$ 3,092.91 5,704.69	
Total deductible		8,797.60
STATE'S SHARE OF CLEAR PROCEEDS OF DECEDENT'S ASSETS		12,755.67
United States' share of decedent's assets derived from unused pension funds	1,134.25	
Less United States' proportionate share of guardianship and estate administration expenses	162.78	
UNITED STATES' SHARE OF CLEAR PROCEEDS OF DECEDENT'S ASSETS DERIVED FROM PENSION FUNDS		971.47
TOTAL ASSETS ON HAND FOR DISTRIBUTION		$13,727.14

[fol. 35] (File Endorsement Omitted)

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MULTNOMAH DEPARTMENT OF PROBATE

No. 76-207

In the Matter of the Estate of
ADAM B. WARPOUSKE, Deceased.

PORTLAND TRUST BANK, Administrator of the Estate of Adam B. Warpouske, Deceased,
RESPONDENT,

STATE OF OREGON, Acting by and through the State Land Board,
PETITIONER-RESPONDENT,

VS.

UNITED STATES, as Trustee for the sole use and benefit of the General Post Fund,
PETITIONER-APPELLANT.

NOTICE OF APPEAL—Filed July 2, 1958

To: STATE OF OREGON, Acting by and through the State Land Board, and to Honorable Y. Thornton, Attorney General for the State of Oregon, and Catherine Zorn, Assistant Attorney General, of their attorneys; and to PORTLAND TRUST BANK, Administrator of the Estate of Adam B. Warpouske, Deceased, and to J. S. Middleton, of its attorneys:

YOU AND EACH OF YOU are hereby given notice that the UNITED STATES, as Trustee for the sole use and benefit of the General Post Fund, does hereby appeal from that portion of that certain Order of Escheat and Decree Determining Interests in Estate determining that the clear proceeds derived from decedent's estate, except as to such portion thereof comprising unused Federal Veteran's pension funds, escheated to and became the property of the

State of Oregon, and that portion directing the administrator of the estate to deliver the aforesaid proceeds to the State Land Board of the State of Oregon for the benefit of the Common School Fund, which said Order and Decree was made, given and entered of record on the 6th day of May, 1958, by the Honorable William L. Dickson, Judge of the Circuit Court of the State of Oregon, for the County of Multnomah, in the above entitled matter entitled "In the Matter of the Estate of Adam B. Warpouske, Deceased."

C. E. LUCKEY,
United States Attorney
For the District of Oregon

/s/ Victor E. Harr
VICTOR E. HARR,
Assistant U. S. Attorney
Of Attorneys for
Petitioner-Appellant

[fol. 36] MAILING CERTIFICATE
(Omitted in Printing)

[fols. 37-44] • • •

[fol. 45] IN THE
CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH
PROBATE DEPARTMENT

(Title Omitted)

ORDER AS TO TESTIMONY—Sept. 10, 1958

This matter coming on ex parte for an order approving a report of the testimony adduced at the trial of the above-entitled cause; and the Court having considered the Stipulation of the parties herein and being fully advised as to the futility of further efforts to obtain a full, true and correct transcript of the testimony so adduced before me at said trial, does hereby approve and adopt as true, correct and authentic a substantial summary of testimony of Dr. Robert Michel, the only witness whose testimony was material to the issues herein involved, as follows:

"Adam B. Warpouske, decedent herein, on December 31, 1955, was admitted to the Good Samaritan Hospital, Multnomah County, Oregon, for treatment of a hip fracture and a cerebral hemorrhage. On January 5, 1956, he was moved to the Multnomah County Hospital for treatment at the expense of the County of Multnomah, State of Oregon. Decedent Adam B. Warpouske remained in the Multnomah County Hospital until March 1, 1956, when he was transferred to the Veterans Hospital, Marquam Hill, Portland, Oregon, for further treatment and hospitalization. During his period of hospitalization in the Multnomah County Hospital his mental condition varied from comatose to semicomatose and he was, for the most part, irrational. At times he appeared to indicate a 'Yes' or 'No' response to simple questions. He was at all times lethargic and mentally confused. The only material testimony given at the trial was that of Dr. Robert Michel of the Multnomah County Hospital, who was of the opinion that

[fol. 46] decedent probably did not know where he was and in all probability did not know that he was being transferred to the Veterans Hospital; that he did not know whether or not anyone had told the decedent that he was being so transferred and hence could not testify whether or not the decedent was aware of the transfer."

WITNESS my hand as Circuit Judge of the County of Multnomah, State of Oregon, this 10 day of Sept. 1958, at Portland, Oregon.

/s/ William L. Dickson
Circuit Judge

[fols. 47-48] Clerk's Certificate to foregoing Transcript (Omitted in Printing)

[fols. 49-50] • • •

[fol. 51] IN THE
SUPREME COURT OF THE STATE OF OREGON

Department 2.

IN THE MATTER OF THE ESTATE OF ADAM B. WARPOUSKE, DECEASED.

STATE LAND BOARD, RESPONDENT,

v.

UNITED STATES, APPELLANT.

Appeal from Circuit Court, Multnomah County.

WILLIAM L. DICKSON, Judge.

Argued and submitted April 13, 1960.

Alan S. Rosenthal, Washington, D. C., argued the cause for appellant. With him on the brief were George Cochran Doub, Assistant Attorney General, Washington, D. C., C. E. Luckey, United States Attorney, Portland, and Robert Wang, Washington, D. C.

Catherine Zorn, Assistant Attorney General, Salem, argued the cause for respondent. With her on the brief was Robert Y. Thornton, Attorney General, Salem.

Before MCALLISTER, Chief Justice and WARNER, O'CONNELL and DUNCAN, Justices.

OPINION—May 18, 1960

AFFIRMED.

WARNER, J.

This is an appeal by the United States from a decree of the circuit court for Multnomah county, department of probate, escheating to the state of Oregon for the benefit of the common school fund that portion of the estate of [fol. 51-B] Adam B. Warpouske received by him from the estate of his deceased brother. The United States claims said fund pursuant to a federal act hereinafter referred to, in its capacity as trustee, for the sole use

and benefit of the General Post Fund, a trust created by that act.

The federal government's position here is predicated solely upon the provisions of 38 USCA §§ 17-17j, hereinafter referred to as the "Act of 1941." The pertinent sections read:

> "§ 17. Vesting of undisposed personalty in United States as trustee for General Post Fund
>
> "Effective ninety days after December 26, 1941, whenever any veteran (admitted as a veteran) shall die while a member or patient in any facility, or any hospital while being furnished care or treatment therein by the Veterans' Administration, and shall not leave surviving him any spouse, next of kin, or heirs entitled, under the laws of his domicile, to his personal property as to which he dies intestate, all such property, including money and choses in action, owned by said decedent at the time of death and not disposed of by will or otherwise, shall immediately vest in and become the property of the United States as trustee for the sole use and benefit of the General Post Fund, a trust fund prescribed by section 725s (b) (45) of Title 31.
>
> "The foregoing provisions are conditions precedent to the initial, and also to the further furnishing of care or treatment by the Veterans' Administration in a facility or hospital. The acceptance of care or treatment by any veteran admitted as such to any Veterans' Administration facility or hospital after ninety days from December 26, 1941, and as well the continued acceptance of care or treatment furnished by the Veterans' Administration after said ninety days by any veteran who is then receiving the same shall con-
> [fol. 51-C] stitute an acceptance of the provisions and conditions of this subchapter and have the effect of an assignment, effective at his death, of such assets in accordance with and subject to the terms and provisions of this subchapter and the regulations issued in accordance with and pursuant thereto. • • •

"§ 17a Presumption from death in facility of contract for disposition of property

"The fact of death of the veteran (admitted as such) in a facility or hospital, while being furnished care or treatment therein by the Veterans' Administration, leaving no spouse, next of kin, or heirs, shall give rise to a conclusive presumption of a valid contract for the disposition in accordance with this subchapter, but subject to its conditions, of all property described in section 17 of this title owned by said decedent at death and as to which he dies intestate. • • •

• • • •

"§ 17g. Notice to veterans of law

"The Administrator of Veterans' Affairs shall prescribe a form of application for hospital treatment and domiciliary care which shall include notice of the provisions of this subchapter. Within ninety days after approval hereof similar notice shall be given to each veteran then receiving care in any facility or hospital as described in this subchapter: *Provided, however,* That this requirement shall be met by posting of said notice with a copy of the prescribed form in a prominent place in each building wherein patients or members are housed. • • •"

The foregoing act was preceded by the Act of June 25, 1910, c 384, which was amended by Act of December 26, 1941, c 634, thus giving it its present form. In discussing certain decisions which follow, we will refer to the earlier version as the Act of 1910.

[fol. 51-D] The facts are not in dispute. On December 31, 1955, Warpouske, a veteran of World War I, was admitted to Good Samaritan Hospital, in Portland, Oregon, for treatment of a hip fracture and cerebral hemorrhage. Five days later, he was moved to the Multnomah County Hospital for treatment at the expense of the county. There he remained until March 1, 1956, when he was transferred to the U. S. Veterans Hospital, Marquam Hill, Portland, Oregon.

While in the county hospital, his mental condition varied from comatose to semi-comatose and he was at all times lethargic and mentally confused. The testimony of one of the doctors of the county hospital was to the effect that Warpouske probably did not know where he was and in all probability did not even know he had been transferred. Indeed, the United States concedes that on March 1, 1956, by reason of his serious mental condition, he could not handle his own affairs. It also produced records of the Veterans Administration showing, as early as 1924, a long history of mental deficiency predating his last illness beginning in December, 1955. A diagnosis made by that facility in 1933 revealed a condition of dementia praecox as early as 1924, and concluded he was insane as of that date and probably before.

His treatment at the Veterans Hospital from the date of his entry, March 1, 1956, to the date of his death, March 19, 1956, reflects no change in his physical or mental condition. There is no evidence of or suggestion by the United States that the decedent during that period was even momentarily mentally competent to negotiate a contract or make a testamentary disposition of his property.

Dying as he did intestate and without known heirs, [fol. 51-E] his estate will escheat to the state of Oregon unless it appears that the federal government has a superior right thereto under the sections of the Congressional Act of 1941, supra.

There is no record indicating who made the decision for the transfer. Certainly, the veteran had no capacity to do so nor did he then have a guardian or relatives to act in his behalf. His presence in the Veterans Hospital can only be said to have been an involuntary admission, even though there was no question as to his right to be there by reason of his disabilities and war service status.

On March 9, 1956, the Portland Trust Bank was appointed guardian of Warpouske's estate for the purpose of receiving an inheritance from the estate of a brother who predeceased him in Wisconsin. This was in the net amount of $12,727.67. In addition thereto, he had when he died an item of personal property of the value of $28 and unexpended veterans pension benefits in the amount

of $1,134.25. No contest exists between the parties as to the government's right to receive the last amount as rightly accruing to it under 38 USCA § 450(3) of the Act of 1930.

Out of the foregoing statement we cull these significant admitted facts which bear heavily in the formulation of our final judgment: Warpouske, long before determined insane, was totally mentally incompetent when he was involuntarily delivered to the Veterans Hospital on March 1, 1956; and that then and thereafter until the date of his death he was incompetent to contract or to make a will, and neither knew where he was or that he had been the recipient of a substantial inheritance.

Contrary to the argument advanced by the govern-
[fol. 51-F] ment, we are of the opinion that when we take the Act of 1941 by its four corners it sounds in contract. It is designed to effect a contractual relationship between the veteran patient and the United States. This is emphasized by words and phrases appearing in its several sections. Thus, we find "The *acceptance* of care or treatment * * * shall constitute an *acceptance* of the provisions and conditions of this subchapter and have the effect of an *assignment*" (Sec 17 of Act); "The fact of death * * * shall give rise to a conclusive presumption of a valid *contract*." (Sec 17a of Act) We note, too, that Sec 17g directs "a form of application for hospital treatment and domiciliary care which shall include a *notice* of the provisions of this subchapter." (Emphasis supplied.)

Appellant's principal assertion of error is: that the court erred "because [it held that] he [the decedent] had not entered into *a valid contract* with the United States providing for such disposition [of his estate] upon his death." (Emphasis supplied.)

The contractual character of the Act of 1941 has been consistently recognized and applied by the federal courts, as demonstrated by the following cases: *U. S.* v. *Gallagher*, 97 F Sup 1014, 1015 (SD Cal 1951); *U. S.* v. *Brown*, 110 F Sup 370, 372 (SD Cal 1952); *U. S.* v. *Peoples Nat. Bank of Chicago*, 121 F Sup 331, 332 (ND Ill 1953); *U. S.* v. *The Mid City Nat. Bank of Chicago*, 121 F Sup 402, 403 (ND Ill 1953); *U. S.* v. *Security-First Nat. Bank*

of Los Angeles, 130 F Sup 521, 522 (SD Cal 1955); *U. S.* v. *Stevens,* 302 US 623, 82 L ed 484, 58 S Ct 388 (1938). It was also so construed in the following state cases: *In re Witte's Estate,* 174 Kan 360, 255 P2d 1039, 1042 [fol. 51-G] (1953); *In re Turner's Estate,* 171 Cal Ap2d 682, 341 P2d 376, 379 (1959). All of the cases cited in this paragraph, except *U. S.* v. *Stevens,* construed the Act of 1941 as it is presently relied upon by the government.

It would appear from the Act of 1941, as well as by judicial declarations made in construing it, that the Congress acted with its usual respect for the Constitution and deliberately adopted the contractual concept in order to avoid trespassing upon an area reserved to the states by the Tenth Amendment; that is, the right to legislate concerning the devolution of property of intestates, including the right to declare escheats.

This conclusion is given recognition in *U. S.* v. *Stevens,* supra (82 L ed at 488), and in *U. S.* v. *Security-First Nat. Bank of Los Angeles,* supra (130 F Sup at 523).

The Act of 1941, being, as it is, a species of statutory contract, is governed by the ordinary rules relating to actions on contract. *Foley* v. *Leisy Brewing Co.,* 116 Iowa 176, 89 NW 230, 231.

It is a principle universally recognized that only the mentally competent can enter into a binding contractual engagement and so, too, the further rule that silence and inaction do not amount to an acceptance of an offer. *Dexter* v. *Hall,* 82 US 20, 21 L ed 73, 77; *Beach* v. *U. S.,* 226 US 243, 57 L ed 205, 33 S Ct 20. These declarations of the law form a part of our own jurisprudence. See *Farley* v. *Parker* (1876), 6 Or 105, 111; *Bowman* v. *Wade* (1909), 54 Or 347, 357, 103 P 72; and *Graham* v. *Allen* (1925), 116 Or 501, 505, 241 P 1007, wherein it was held that an instrument signed by one non compos mentis at the time of its execution is *void.* See, also, *German Savings & Loan Soc.* v. *DeLashmutt,* 67 F 399 (CC D Or [fol. 51-H] 1895), following *Dexter* v. *Hall,* supra; *Edwards* v. *Davenport,* 20 F 756 (CC SD Iowa 1883), and *Farley* v. *Parker,* supra. Infants and the mentally incompetent both command the protection of courts of law, as well as courts of equity. *Dexter* v. *Hall,* supra (21 L ed at 77).

In coming to his conclusion in *U. S.* v. *Stevens,* supra, that a valid contractual relationship subsisted between the veteran and the government, we find what we deem a significant statement in the light of the facts prevailing in this matter. There, Mr. Jusice Black observed: "Nothing in the record indicates that the agreement was not fairly and voluntarily entered into between the parties, or that it was inequitable, unjust or not upon valuable consideration. *Both parties were competent to make the contract.*" (302 US at 628; 82 L ed at 488) (Emphasis supplied.)

Crowded to avoid the law's solicitude for the incompetent in the area of contract, appellant attempts to sidestep it by recourse to that part of Sec 17a of the Act of 1941, reading: "The fact of death of the veteran (admitted as such) in a facility or hospital, • • • leaving no spouse, next of kin, or heirs, shall give rise to *a conclusive presumption of a valid contract.*" (Emphasis supplied.) In support of this position, appellant advances the argument: "This provision is wholly inconsistent with the view of the court below that Congress intended to require an actual contract between the veteran and the federal government." If by "actual" appellant means only express contracts and not contracts so forcibly implied by the statutory conclusion, then it flies in the face of the consistent line of federal holdings, as pointed out above, that both the Act of 1910 and its successor, the Act of [fol. 51-I] 1941, are premised upon a theory of contractual relationship.

Assuming without deciding that between the government and veterans who are sui juris the Congress can create a valid contractual relationship by the employment of the conclusive presumption, we are still confronted with the question as to whether such a presumption can be effectively and constitutionally applied against a concededly incompetent veteran. In short, can a legislative body defy common experience and by resort to fiat convert the irrational into the rational, transform the unnatural into the natural? Has Congress the power by the adoption of the device of an absolute presumption to create a "valid" engagement out of one made by an incompetent

person, which without doubt would otherwise be declared to be a nullity by the courts?

Presumptions, whether conclusive or disputable, are generally defined as inferences *required* by a rule of law to be drawn as to the existence of one fact from the existence of some other established basic fact. They may be created by statute if there is some justification of public policy, or a rational connection between the fact proved and the fact presumed. But statutes declaring certain facts to be even prima facie or rebuttable evidence of other facts can violate constitutional guaranties of due process where there is no rational connection between the facts proved and the ultimate fact presumed. *Tot* v. *U. S.*, 319 US 463, 87 L ed 1519, 63 S Ct 1241 (1943); *McFarland* v. *American Sugar Ref. Co.*, 241 US 79, 60 L ed 899, 36 S Ct 498; *Manley* v. *Georgia*, 279 US 1, 6, 73 L ed 575, 578, 49 S Ct 215; *Morrison* v. *California*, 291 US 82, 91, 78 L ed 64, 54 S Ct 281; *Great Atlantic &* [fol. 51-J] *Pacific Tea Co.* v. *Ervin*, 23 F Sup 70, 80 (DC Minn 1938); *U. S.* v. *Jones*, 176 F2d 278 (9th Cir 1949); 1 Jones, Evidence (5th ed), 23-24, § 12; IV Wigmore, Evidence, 715, § 1353; Anno 162 ALR 495; 16A CJS 817, Constitutional Law § 621, n 74; 20 Am Jur 39-41, Evidence §§ 9, 10; 10 Tex Law Rev 34 (1931-32); *City of Seattle* v. *Ross*, — Wash —, 344 P2d 216, 219 (1959).

Mr. Justice Holmes in *McFarland* v. *American Sugar Ref. Co.*, supra, observes:

> "As to the presumptions, of course the legislature may go a good way in raising one or in changing the burden of proof, but there are limits. It is 'essential that there shall be some rational connection between the fact proved and the ultimate fact presumed, and that the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate.' * * *." (241 US at 86)

Perhaps the clearest and best enunciated statement of the test of national connection is found in that made by Mr. Justice Roberts in *Tot* v. *U. S.*, supra (87 L ed at 1524):

"• • • Under our decisions, a statutory presumption cannot be sustained if there be no rational connection between the fact proved and the ultimate fact presumed, if the inference of the one from proof of the other is arbitrary because of lack of connection between the two in common experience. This is not to say that a valid presumption may not be created upon a view of relation broader than that a jury might take in a specific case. But where the inference is so strained as not to have a reasonable relation to the circumstances of life as we know them it is not competent for the legislature to create it as a rule governing the procedure of courts."

[fol. 51-K] Although this court has never been faced with a problem of the character now presented, our adherence to these principles has implicit support, as reflected by *Wyckoff* v. *Mutual Life Ins. Co.*, 173 Or 592, 608, 147 P2d 227, where we cited with approval and with the emphasis there indicated the following statement from 20 Am Jur 40, Evidence § 9:

"• • • Statutes declaring certain facts to be prima facie or presumptive evidence of other facts do not, *where there is some rational connection between the facts proved and the ultimate facts presumed,* deny equal protection of the laws or violate constitutional guaranties of due process of law. • • •"

See, also, our holding in *Burke* v. *Burke*, 216 Or 691, 697, 340 P2d 948, where Mr. Justice MILLARD, in discussing the presumption of a child's legitimacy by reason of being born in wedlock (ORS 41.360(3) and 109.070), observes: "• • • the modern trend is away from the rule of conclusiveness. 57 ALR2d 759," and cites with approval the following statement from *Anderson* v. *Anderson*, 214 Cal 414, 5 P2d 881, 882: "It [a presumption] cannot prevail as against undisputed facts to the contrary and at variance with the laws of nature." Although discussing the Burke case presumption of legitimacy, we are of the opinion that the statements quoted are equally forceful when the making of "valid contract" is conclusively presumed to have been accomplished by one non compos mentis while a thrall to his mental disability.

What is true of rebuttable presumptions has even more cogency with respect to conclusive presumptions which operate to deprive individuals of their rights or infringe upon constitutionally protected areas. *Heiner* v. *Donnan*, [fol. 51-L] 285 US 312, 76 L ed 772, 52 S Ct 358 (1932); *Schlesinger* v. *Wisconsin*, 270 US 230, 70 L ed 557, 46 S Ct 260, 43 ALR 1224; *City of New Port Richey* v. *Fidelity & Deposit Co. of Maryland*, 105 F2d 348 (5th Cir 1939), 123 ALR 1352; *Comm'r of Internal Revenue* v. *Clark*, 202 F2d 94 (7th Cir 1953). See, also, 12 Am Jur 317-18, Constitutional Law § 625.

In *Heiner* v. *Donnan*, supra, the court dealt with a provision of the Internal Revenue Code which made transfer of a gift two years prior to death conclusively presumed to be made in contemplation of death. It was held that the presumption violated the prohibition of the Fifth Amendment against the taking of property without due process of law and the presumption was characterized by Mr. Justice Sutherland as follows:

> "• • • whether the • • • presumption be treated as a rule of evidence or of substantive law, it constitutes an attempt, by legislative fiat, to enact into existence a fact which here does not, and cannot be made to, exist in actuality, • • •." (76 L ed at 780)

All parties concede the extreme degree of the mental incompetency of the deceased veteran; yet, the government's only claim to his property (in this instance, *not unexpended funds received from United States pensions*, but an inheritance received from his brother) rests solely upon a conclusive presumption that his presence in the hospital at death resulted in a "valid contract for the disposition • • • of all property • • • owned by [the] decedent" at the time of his death.

We find in the situation presented by Warpouske's history and the employment of the presumption relied upon by appellant, a striking exemplification of an irra- [fol. 51-M] tional and unnatural relationship between the proven fact of his death in a government hospital as an incompetent and the ultimate fact presumed. It is one having all the elements which have prompted courts to

deplore such a mandate as an arbitrary and unreal artifice, contravening the Due Process Clauses of the Fifth and Fourteenth Amendments. In this matter, when applied to Warpouske and other unfortunates of the same category, it is, as said by Mr. Justice Sutherland in *Heiner* v. *Donnan*, supra, "an attempt, by legislative fiat, to enact into existence a fact which here does not, and cannot be made to, exist in actuality."

The presumption here excludes consideration of all the circumstances which brought Warpouske to the hospital and made him an involuntary patient there from the time of his entry until the day of his death. We are now asked to presume, however, that a man totally noncompos mentis voluntarily accepted the benefits the hospital bestowed (and to which he was entitled under the law, without charge) and who, because of his failure to make a testamentary disposition of his estate while in the hospital, and to further presume that by his enforced silence he waived his right so to do in favor of the government. The death of the veteran in the hospital, although helpless and there without his direction or knowledge, is thus made the sole factor which activates the absolute presumption that he made "a valid contract for the disposition" of his property to the United States (Secs. 17, 17a) and which, if applied, forecloses any opportunity to present evidence that the veteran was wanting in mental capacity either then or for years before, to make any kind of a valid contract or will.

[fol. 51-N] That the creation of this contract with Warpouske might well be a proper subject for judicial inquiry despite the conclusive presumption written into the Act of 1941 is strongly indicated by Judge Tolin in *U. S.* v. *Security-First Nat. Bank of Los Angeles*, supra (130 F Sup 521), by his observation at page 522, reading:

> "No party has challenged the validity of this agreement on the ground that there was no agreement as to the footnoted matter, and although a footnote to an application for admission to a hospital is not an exemplary way to establish privity of contract, in the absence of challenge, it is sufficient. Considering that applicants for domiciliary care in a hospital are

usually sick and often lacking acute mental perception, the force of a footnote to the entry application (the footnote purporting to create a special contract of unusual character) might be considerably diminished, and frequently destroyed by a careful inquiry into the circumstances of the execution of the application for domiciliary care. * * * That contracts of this character may be valid if properly entered into, is firmly established by the Supreme Court adjudication."

We do not think the Congress ever intended to apply the presumption found in the Act of 1941 to a situation akin to what we find here, for to thus appropriate the property of the estate of an utterly helpless veteran by the arbitrary device of "conclusive presumption" is basicallly contrary to the traditional solicitude of the government for its disabled war veterans.

There is an even more cogent reason for assuming that the position taken by appellant's counsel is not consonant [fol. 51-O] with Congressional intent. To conclude this matter in favor of the government by approving its claim to Warpouske's inherited money solely because of the conclusive presumption it invokes, would, in fact, transform the status of the government claim in the instant matter to one closely approaching the exercise of an arbitrary right of escheat, rather than upon a claim of right derived from contract.

We have no doubt that one of the motivations for the legislative design upon which the Act of 1941 is predicated, in terms of contract, was the Congressional consciousness of its want of constitutional power to exercise a right of escheat in an estate, knowing full well that all matters concerning the devolution of property are reserved by the Tenth Amendment to the several states. *Mager* v. *Grima*, 49 US 490, 493, 12 L ed 1168; *Pennoyer* v. *Neff*, 95 US 714, 722, 24 L ed 565; *U. S.* v. *Fox*, 94 US 315, 320, 24 L ed 192; *U. S.* v. *Perkins*, 163 US 625, 628, 41 L ed 287, 16 S Ct 1073. See, also, *U. S.* v. *Security-First Nat. Bank of Los Angeles*, supra (130 F Sup at 523).

Notwithstanding the multiple holdings of the federal courts that the Act of 1941 envisions a contractual relationship, counsel for appellant would have us believe the contrary and to do so places reliance upon the decisions of state courts.

But before we give critical attention to the several cases which appellant's counsel urges upon us, it is important that we take notice of the two separate and distinct acts under which the government can lay claim to the estates of veterans dying intestate in a government facility without heirs surviving them.

The first, in the order of their enactment, was § 450(3), 38 USCA. This subsection was added to § 450, supra, by Act of July 3, 1930, and we refer to it as the Act of [fol. 51-P] 1930. The other is the Act of 1941, under which the federal government lays its claim against the estate of Warpouske.

Both Acts rely upon two different theories of right as a basis for the governmental claim of ownership and each reaches an entirely different species of property in the veteran's estate. Moreover, the property recovered under the Act of 1930 goes into an entirely different fund than that obtained under the Act of 1941.

The Act of 1930 implements a recoupment of any unused or accrued funds derived from federal pensions or other forms of veteran gratuity, whereas, the Act of 1941 is designed to place in the government's reach any other personal property of the veteran no matter from whence derived. Hence, we have here the relinquishment to the government without contest the sum of $1,134.25, earlier referred to as being funds representing unexpended pension benefits. This was correctly done pursuant to the Act of 1930. But as to the balance of decedent's estate, represented solely by the inheritance received from his brother, appellant claims ownership, not under the Act of 1930, but under the Act of 1941, on the theory of a conclusive contract.

No element of contract is present or required under the earlier Act of 1930, as is evident from a reading of the pertinent part of Sec 450(3):

"• • • That any funds in the hands of a guardian, curator, conservator, or person legally vested with the care of the beneficiary or his estate, derived from compensation, automatic or term insurance, emergency officers' retirement pay, or pension, payable under said Acts, which under the law of the State wherein the beneficiary had his last legal residence [fol. 51-Q] would escheat to the State, shall escheat to the United States and shall be returned by such guardian, • • • to the Veterans' Administration, and shall be deposited to the credit of the current appropriations provided for payment of compensation, insurance or pension."

The obvious intent, purpose and meaning of the foregoing section of the Act of 1930 is that the federal government has not made the gift of a pension or other gratuity absolute and complete, but has retained in itself at all times a contingent reversionary interest, which under the circumstances stipulated in Sec 450(3), would vest the residue of the gift in the government to the exclusion of any claim of escheat by the state. *In re Lindquist's Estate*, 25 Cal2d 697, 154 P2d 879 (1944). No claim of contract is involved. The right to the continuing interest of the government to the unused portions of such gratuities attaches from the date of the initial disbursement of its bounty. See *Abbott* v. *Morgenthau*, 68 App DC 83, 93 F2d 242.

Unfortunately, all courts have not observed this clear and important distinction between what the government can properly claim under the Act of 1941 and can properly obtain under the Act of 1930, nor have they noted the difference in the basic theories around which each of said Acts is separately built. This is found to be particularly true when one examines the decisions of the state courts, and is exemplified by the cases cited to us by appellant. To the extent that they do not adjudicate claims made to property under the Act of 1941, but are rather addressed to the recovery of the kind of property specified in the Act of 1930, they may be laid aside.

With these matters in mind, we now turn to a consideration of the cases which appellant has marshaled.

[fol. 51-R] *In re Gonsky's Estate*, 79 ND 123 55 NW2d 60 (1952), the estate "consisted of United States savings bonds and cash all derived from payments to him [Gonsky] during his lifetime by the United States as retirement for disability as a regular army person." (55 NW2d, supra, at 61).

In re Skriziszouski's Estate, 382 Pa 634, 116 A2d 841 (1955), again, we find that the decedent's estate amounting to $21,905, "was composed of money received from the Federal Government through the Veterans' Administration, plus interest earned thereon," except for $50 received as a bonus from the Commonwealth of Pennsylvania (116 A2d, supra, at 842).

The same situation as to the character of the estate left by decedent prevailed *In re Campbell's Estate*, 195 Misc 520, 89 NYS2d 310 (1949), where the surrogate court observes, at p 311: "His [Campbell's] estate consists of assets derived solely from pensions paid to the decedent through his committees by the United States Government." So, too, in the *Matter of the Estate of Alexander Zakowski* (1950) (an unreported opinion of the Circuit Court for Wayne County, Michigan, copy of which is incorporated in appellant's brief by the appendix).

Thus, in every state case to which we make reference in the preceding paragraphs, the government's reversionary right to recovery of unused bounties is made clear by the provisions of the Act of 1930 and is the explanation for those decisions. Here, however, the government reaches not for the residue of pension funds, but for property which came to Wapouske by inheritance. Obviously, the foregoing cases do not speak to the contractual [fol. 51-S] aspect of a claim arising under the Act of 1941, nor, for the same reason, do they discuss or refer to the conclusive presumption clause of the Act of 1941 upon which appellant rests its case. The only element common to the last-mentioned cases and the one at bar is that the decedents were mentally incompetent, a factor which in no way militates against the government's reserved right to affect a recovery under the Act of 1930.

Appellant also points to *In re Bonner's Estate*, 192 Misc 753, 80 NYS2d 122 (1948), a decision of the surrogate

court of New York, but never appealed. We have reserved comment on that case because it more nearly proximates the factual situation disclosed by the record in the case at bar. The decedent, Bonner, was an adjudicated incompetent and an inmate of veterans hospitals continuously from 1922 until his death in 1944. He left assets consisting of Adjusted Service Bonds of the value of $1,550 and other assets worth $3,350.21 from an undisclosed source and in the opinion referred to as the "distributable balance," and, therefore, in the property aspect similar to Warpouske's estate. The court rests its conclusion favorable to the government upon both the Act of 1930 and the Act of 1941.

A too casual reading of the decision might warrant a conclusion that it supports the government's position in this appeal. But critical analysis nullifies its value here. As to the service bonds, a form of governmental gratuity, the court ruled correctly.

Concerning the rest of the estate, i.e., the "distributable balance," which came to Bonner from other than governmental sources, the court makes this arresting and palpably incorrect statement at p 126:

> "• • • Apart from the Adjusted Service Bonds [fol. 51-T] which were paid to decedent as additional compensation for his service in World War I, it is not claimed that the distributable balance herein consists of the residue of governmental gifts. *This fact, however, is not controlling.* • • •" (Emphasis supplied.),

citing as its sole authority *Matter of McGhee,* 149 Misc 713, 268 NYS 79 (1932), aff'd 239 App Div 763, 264 NYS 903, aff'd 262 NY 686, 188 NE 121.

But McGhee fails to support such a sweeping conclusion. A reading of McGhee discloses two interesting and distinguishing differences from the Bonner case and the present appeal. McGhee, a veteran of the Civil War, was a resident of the National Military Home at Bath, New York. When he entered that facility in 1929, he executed a written application which was, in fact, a contract leaving to the government the proceeds of his estate not dis-

posed of by will and embodying the terms of what was then Sec 136 of 24 USCA. That Act was the predecessor to the present Act of 1941. The claim of the government, rightly adjudicated in its favor, rested solely on a written agreement as then required by the Act as a condition to his entry. McGhee died intestate and without heirs. No issue was raised concerning his mental capacity to make such a contract, nor does the decision suggest that he was at any time incompetent.

We find nothing in the cases cited to us by appellant which is decisive here and for the reasons previously stated, hold that the Act of 1941 is inoperative when applied to the estate of Adam B. Warpouske.

Affirmed.

[fol. 52] IN THE
SUPREME COURT OF OREGON

* * * *

Appeal from MULTNOMAH County

In the Matter of the Estate of
Adam B. Warpouske, deceased.

PORTLAND TRUST AND SAVINGS BANK, Administrator of the Estate of Adam B. Warpouske, deceased,
RESPONDENT

STATE OF OREGON acting by and through the State Land Board, RESPONDENT

v.

UNITED STATES OF AMERICA as Trustee for the sole use and benefit of the General Post Fund, APPELLANT

JUDGMENT—May 18, 1960

This cause on April 13, 1960, having been duly argued and submitted upon and concerning all questions arising upon the transcript and record and then reserved for further consideration, and the Court having fully considered all said questions as well as suggestions of counsel in their argument and briefs finds there is not error as alleged.

IT THEREFORE IS CONSIDERED, ORDERED and DECREED that the decree of the court below rendered and entered in this cause be and the same is in all things affirmed.

The appellant having given an undertaking on appeal with United States Fidelity and Guaranty Company conditioned that appellant will pay all damages, costs and disbursements which may be awarded against it on the appeal,

IT THEREFORE IS ORDERED that respondent State of Oregon have and recover of and from appellant and its surety its costs and disbursements in this Court taxed at $30.

IT FURTHER IS ORDERED that this cause be remanded to the court below from which the appeal was taken with directions to enter decree in accordance herewith.

[fol. 53] Clerk's Certificate to Foregoing Transcript
Omitted in Printing

[fol. 54] SUPREME COURT OF THE UNITED STATES

No. 329, October Term, 1960

UNITED STATES, ETC., ET AL., PETITIONERS,

vs.

OREGON

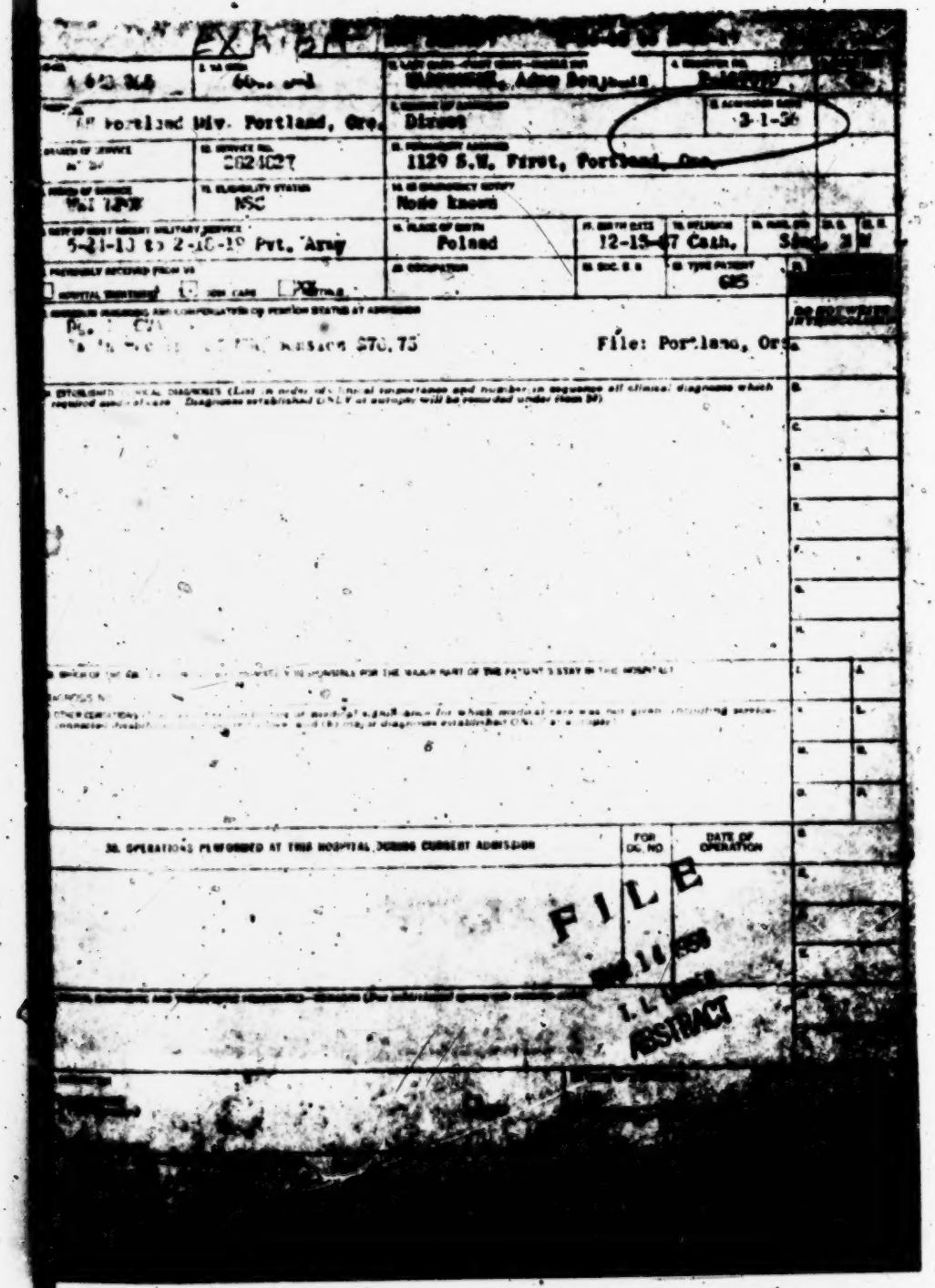
ORDER ALLOWING CERTIORARI—November 7, 1960.

The petition herein for a writ of certiorari to the Supreme Court of the State of Oregon is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

• • • •

[fol. 72] EXHIBIT 1



[fols. 74-75] * * *

[fol. 76] EXHIBIT 3

EXCERPTS FROM PHYSICAL AND NEUROPSYCHIATRIC EXAMINATION

* * * * *

MARITAL HISTORY Single. He has never been engaged. When asked if he had ever thought seriously about getting married, he answered that he had before the War and when pressed for the reason, he stated that it was for the purpose of getting a home and have someone to help, at the same time someone to help him. He made a further statement to the effect that he has always been very particular about who should help him, which gave the examiner the impression that he meant that he did not readily make friends with everyone.

COMPENSATION "The veteran's disability was rated temporary total from November 29, 1924, because of his incompetency, due to dementia precox, hebephrenic type. His guardian is G. E. Ostrander, 814 No. 8th Street, Sheboygan, Wis. The claimant receives an institutional award of $20.00 a month, which will be forwarded to your institution until June 30, 1933. At that time payments will be discontinued, as the veteran's disability was not found to exist to a 10% degree within two years from date of discharge, when his folder was reviewed under Public #2, 73d Congress."
A later report states the institutional award of $20.00 will continue until Oct. 31, 1933.

PRESENT ILLNESS The following is taken from report of the Veterans Adm. of Milwaukee dated June 5, 1933:

"The veteran applied for compensation on December 3, 1924, for a mental disability, total degree. Other information on application states that he was born on December 25, 1893, in Russian-Poland, that his occupation before service was farming from 1910 to 1918; two employers before his enlistment were, Henry Olson, Wautoma, Wisconsin, for three falls, and August Kohnke, Princeton, Wisconsin, from April to July, 1917. After discharge

from the army, he worked as a papermaker, from 1919 to 1920, and as a section hand from April 1924 to August 1924. The veteran's first hospitalization was November 29, 1924, when he was admitted to the Wisconsin Psychiatric Institute, Mendota. At that time he was quiet, accessible, cooperative, expressed delusions of persecution, I. Q. 65, and his insight into his condition was poor. He was diagnosed dementia precox, hebephrenic type. He was examined at that institution May 27, 1925. He complained that his 'body was all wrong and that the blood was leaving his body.' He evinced auditory hallucinations and his diagnosis remained the same. The examination of June 5, 1926, revealed no change in the veteran's condition. However, he made a good adjustment to hospitalization, but was intellectually and emotionally deteriorated; retained the delusion that he was being poisoned, and that the poison caused an eruption on his head. The subsequent progress note indicates no change in his condition, except that at times he was profane and excited, replied to questions readily, but was distractible. During the summer of 1931, worked in the dining room of one of the cottages, and was later detailed to work as a painter, and in October, of 1931, he was granted a ground parole. In January 1932, he became disturbed, and was given hydrotherapy for a few weeks until condition subsided. In August 1932, he was returned to the painting detail, where his work was satisfactory and there appeared to be a slight improvement in his condition. The progress note of February 28, 1933, advises that his work on the dining room detail was also satisfactory and that his behavior on ground parole was good. He remained delusional, talked to himself, and the diagnosis of dementia precox, hebephrenic type, was continued. He remained at the Wisconsin Memorial Hospital, Mendota, Wisconsin, until the transfer to your facility, May 10, 1933."

WARPECHOWSKI, Steve SC C-1,196,214 Reg. 1206 [fols. 77-80] • • •

[fol. 81] EXHIBIT 4

Exhibit 4

APPLICATION FOR HOSPITAL TREATMENT OR DOMICILIARY CARE

Penal Provisions Applicable to Title I, Public No. 2, 72d Congress

SECTION 35. Any person who shall knowingly make or cause to be made, or conspire, combine, aid or abet in, agree to, arrange for, or in any way procure the making or presentation of a false or fraudulent affidavit, declaration, certificate, statement, voucher, or paper, or writing purporting to be such, concerning any claim for bounty under this Act, shall forfeit all rights, claims, and bounty under this Act, and, in addition to any and all other penalties imposed by law, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than $1,000 or imprisonment for not more than one year, or both.

REDUCTION OF PENSION, COMPENSATION, OR EMERGENCY OFFICERS' RETIREMENT PAY WHILE RECEIVING HOSPITAL OR DOMICILIARY CARE

Where any disabled veteran having neither wife, child, nor dependent parent is being furnished hospital treatment, institutional or domiciliary care by the United States or any political subdivision thereof, the pension, compensation, or emergency officers' retirement pay shall not exceed $15 per month, provided that the amount payable for such disabled veteran entitled to pension for disability the result of injury or disease incurred after active military or naval service shall not exceed $20 per month, and provided further, that where any disabled veteran who is being furnished hospital treatment, institutional or domiciliary care by the United States or any political subdivision thereof, has a wife, child, or dependent parent the pension, compensation, or emergency officers' retirement pay may, in the discretion of the Administrator, be apportioned on behalf of such wife, child, or dependent parent, in accordance with instructions issued by the Administrator.

As to pension payable on account of service prior to the Spanish-American War, the provisions of this paragraph shall apply only in cases where the disabled veteran is being furnished hospital treatment, institutional or domiciliary care by the Veterans Administration, provided, however, that the amount payable while the veteran is in the institution shall be $15 per month in all cases.

The applicant should forward this form, when fully executed, with a certified copy of his discharge from last period of service, to the Veterans Administration facility nearest his home, which is located at BILOXI, MISS. (Location of facility)

1. I WARBOUSES, (Print) (Last name) ADAM (First name) B. (Middle name) C No 1,639,896

hereby apply for admission to a Veterans Administration facility for (hospital treatment) (domiciliary care)*.

Dec. 25, 1887 (Date of birth) white (Color) male (Sex) Russia Poland (Place of birth) No permanent address (Present place of residence)

2. My entire service in the active military or naval service of the United States has been as follows:

Entered: Date	Entered: Place	Service No.	Discharged: Date	Discharged: Place	Name and designation	Character of Discharge
4-18	Rhinelander, Wis.	2824627	2-8-19	Cp. Funston, Ks.	Pvt. Ord. Dpt., 69th Inf.	Hon.

(COPIED FROM COPY OF DISCHARGE)

Note.—If you served under a name other than the one used in this application, indicate the name under which you served and the period of service.

3. Have you filed claim for other benefits? Yes (Yes or no) If "Yes" at what Veterans Administration office? Dayton, O. (Location)

What office has your case file? WOOD, WISCONSIN

4. (a) Do you receive pension? NO (Yes or no) Amount per month, $ (b) Do you receive compensation? NO (Yes or no) Amount per month, $ (c) Do you receive retirement pay? NO (Yes or no) Amount per month, $ (d) Do you receive Government Insurance pay? NO (Yes or no) Amount per month, $ (e) From what other source do you receive income? NONE (Nature of income) Amount per month, $

5. Value of all property, real and personal, including cash on hand and in bank

Description and Location of Property	Encumbrance on Property	Monthly Income from Property
None		

* Strike out inapplicable words or phrases.

Exhibit

6. Are you single? Yes Married ..... Widowed? ..... Divorced? No (a) If married, are you living with your wife? ..... (b) Have you any child or children under 18 years of age? ..... If "Yes," state number of children ..... and their ages ..... (c) Have you other persons dependent upon you? No If "Yes," state relationships .....

7. Give the name and address of your [redacted]

Thomas Stedman (Friend) Rhinelander, Wisconsin

8. Are you entitled to hospital care by membership in a lodge, society, community group treatment plan, etc., or as a beneficiary of an insurance company, workmen's compensation commission, industrial accident board, etc.? No If "Yes," give name of agency or organization .....

9. Are you financially able to pay the necessary expenses of hospital or domiciliary care? No

10. Are you able to pay transportation to and from a Veterans Administration facility? No abt 30 da., disch.

11. (a) Have you received hospital care as a patient of the Veterans Administration? Yes If "Yes," state when Nov 21,1939 and where WOOD, WIS. (Has discharge card & MHB) 5 or 6 yrs ago

(b) Have you received domiciliary care in a Veterans Administration facility? Yes If "Yes," state when ..... and where Dayton, O. Wood, Wis. Has disch. from Wisc.Veterans Home(State Home) AOE

(c) Have you within the last 12 months, while hospitalized as a patient of the Veterans Administration left the hospital: (1) Without official leave; (2) against medical advice, or, (3) been discharged for any disciplinary reason? No (d) Have you within the last 12 months, while under domiciliary care in any Veterans Administration facility, (1) been dropped from the rolls for absence without leave or demanding papers, or, (2) have you been given an enforced furlough, or, (3) requested and received your discharge while under sentence or on an enforced furlough? NO (e) If your answer to either (c) or (d) above is "Yes," state when ..... where ..... and why .....

12. I agree that, in the event of my death while under care, leaving no heirs at law nor next of kin, all personal property owned by me at the time of my death, including money or choses in action held by me and not disposed of by will, whether such property be the proceeds of pension, compensation, retirement pay, or life insurance, or otherwise derived, shall vest in and become the property of the Veterans' Administration for the sole use and benefit of the post fund; and that all my personal property shall upon my death, while under care, at once pass to and vest in the Veterans Administration subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within 5 years after my death.

I hereby certify that I {have had read to me}* and understand all questions and answers on this form; that the answers to all questions are true and complete to the best of my knowledge and belief; and that the foregoing questions and answers are made as a part hereof with full knowledge of the penalty provided for making a false statement as to material fact in this application. The penal provisions appearing on page 1 hereof have been read {to me}* me, and are fully understood.

Witness to signature by mark (X)

1. ..... (Signature)
..... (Address)

2. ..... (Signature)
..... (Address)

Adam B Wozniewski (Signature of applicant or representative)

Post office address No permanent address (Number) (Street) (City) (State)

Subscribed and sworn to before me this 19th day of January, 19 40 by Adam B. Wozniewski, claimant, to whom the statements herein were fully made known and explained. I certify that the questions and answers thereto have, in my presence, been {read to}* the claimant.

[SEAL]

Mary A. Reddington
(Authority) VETERANS ADMINISTRATION (Grade)

* Strike out inapplicable words or phrases.

FORM 4505

[fol. 82] • • •

[fol. 83] RE: WARPOUSKE, Adam B., C-1 628 265

The above veteran was admitted to the Domiciliary section of this facility yesterday afternoon, January 19, 1940. He was very uncooperative during admission. This morning he came to this office pretending to be sick. He was referred to Dr. Andersen for a Neuropsychiatric examination and to Dr. Rothman for a heart examination. While the requests for consultation were being written, the veteran threw his meal ticket at me and said he was leaving, therefore no further examination will be made since this man is leaving.

/s/ P. P. Haslitt
P. P. HASLITT, M.D.

VAF, Biloxi, Miss.,
January 20, 1940.

[fols. 84-85] • • •

[fol. 86] EXHIBIT 5

EXCERPT FROM MEDICAL CERTIFICATE

* * * * *

(4) Diagnosis: Psychosis, undiagnosed.
Arthritis lumbar spine.
[ ]
Dental Cavies V. U. bilateral mild

(5) Strike the clauses not applicable: The applicant (is) (is not) ambulant. He (is) (is not) mentally competent. He (will) (will not) need an attendant during his travel. The proposed attendant's name is .....; address .....

(Date) Feb. 8, 1940

(Signature of examining physician) J. A. Eisenberg

(Street) VAF (City) Dayton (State) Ohio

[fol. 87] * * *

[fol. 88] Exhibit 5A

VETERANS ADMINISTRATION
(See August 1941)

NOV 30 8 1

To: Wood Wisconsin VETERANS ADMINISTRATION

Read carefully, INSTRUCTIONS, page 2, and "Additional," page 3, when the space under item 8 is not sufficient for entries.

CHANGE OF CONDITION, ADEQUATE FOR RATING, REFERRED FOR ACTION

REPORT OF PHYSICAL EXAMINATION

BY

C. A. Bush
Signature of certifying officer

Date of admission to hospital February 8, 1940 C-No. 1,628,265
(See par. 7, page 2)

Date of discharge from hospital February 20, 1940 (See par. 9, page 2) B-63,360

1. Claimant's name HARPOKHEE, Adam B. (Last) (First) (Middle) Address 19 Murray St. Dayton, Ohio

2. Rank and organization Pvt. Sup. Co. 69th. Inf. Enlistment 5/24/18 (Date)

Discharge 1/17/19 (Date) 3. Birthplace Poland

Age 52 Race White Color of eyes - Color of hair -

4. Height 67½ inches. Weight (weigh him) 131 Highest weight in past year 175 Normal weight 155

5. Examined V.A., Dayton, Ohio: Hospitalized (Place) (Begun—date) (Ended—date)

6. Permanent marks and scars other than described below: None

7. Origin and date of incurrence of disability as alleged by claimant: Patient is very belligerent and very uncooperative. To obtain history one must persistently ask questions and if he chooses to answer, he does. States that he has arthritis, heart trouble, stomach trouble and nervousness. States he gets electric shocks in the flesh of his arms especially, coming out from the bone. Has his own stethescope to listen to his heart. Takes his own IQS; strychnine gr. 1/3 phenacetin, digitalis and etc. Doesn't want hospital, but just domiciliary care.

8. Brief medical and industrial history:
(In first examinations, this history must cover sufficient time preceding date of discharge from military service. When previous examinations have been made, the examiner will record only the medical and industrial history covering the period since the most recent previous examination, thereby bringing it up to date of his examination. If, for any reason, such history can not be obtained, the reason therefor must be stated. The data to be noted are: When, where, by whom, and for what condition has the veteran received medical treatment? When, where, by whom, and at what occupation and wages was he employed, and how continuous was the employment?)

No fractures or serious injuries.
No pneumonia or tuberculosis.

No operations:

Post-War Occupations: Janitor, odd jobs.

85. Ex. 5 (a) ABSTRACT CARD

[fols. 89-99] * * *

[fol. 100] EXHIBIT 6A

EXCERPT FROM MEDICAL CERTIFICATE

A careful physical (including mental) examination of the applicant discloses these findings and diagnosis:

(1) Brief history:

Born in Poland, Dec. 25, 1887. Came to U. S. at 10, little education. For 20 years worked as painter and decorator, was never married. No history of venereal disease. Patient in Winnebago State Hospital from Aug. 3, 1939 to Oct. 4, 1939 as a regularly committed patient from Waupaca County as a resident of Oneida County. Diagnosis: Amyotrophic Lateral Sclerosis. Transferred to Veterans Facility; was returned on Sept. 22, 1941.

(2) Symptoms:

Patient is irritable, exhibits antisocial behavior, is seclusive, demanding, has grandiose delusions believing that he has made many inventions such as a radio set without wires, experiences auditory and visual hallucinations and has delusions of persecution which have been in existence for many years. He has many physical complaints.

* * * *

(4) Diagnosis: Dementia Praecox—Paranoid Type.

(5) Strike the clauses not applicable: The applicant (is) ambulant. He (is not) mentally competent. He (will) need an attendant during his travel. The proposed attendant's name is William Noholty; address Winnebago, Wisconsin.

(Date) Feb. 1, 1943

(Signature of examining physician) J. T. Pitersik
(Street) (City) Winnebago (State) Wisconsin

[fol. 101] EXHIBIT 6B

[SEAL] THE STATE OF WISCONSIN
WINNEBAGO STATE HOSPITAL
Winnebago

Oct. 8, 1942

Mr. Albert R. Freeman
Contact Officer
Veterans Administration
Wood, Wisconsin

In Re: Adam B. Warpouske
C-1 628 265

Dear sir:

Your letter of Aug. 10, 1942 regarding Adam B. Warpouske, a patient in this hospital, has been received. Our reply is delayed due to making a diagnosis in this case.

Adam B. Warpouske, 56, single, Catholic, painter, was admitted here Aug. 3, 1939 as a committed patient from Waupaca County, residence Oneida County. He was transferred to the Veterans Facility at Wood, Wisconsin on Oct. 4, 1939, and was returned here on Sept. 22, 1941 and has been in continuous residence since the latter date.

The family history is not pertinent. The patient was born in Poland, Dec. 25, 1885. He immigrated to this country with his father at the age of 10 and lived with his father on a farm in Marathon County. He finished the second reader. The patient was in the U. S. Army and has been at the Veterans Home at Waupaca, and also has been a patient in the Veterans Bureau at Wood, Wisconsin.

Mentally, this patient is irritable, has many ideas of persecution, and feels that many people have it in for him. He feels that he does not belong in a mental hospital because he is normal. He is definitely of the opinion that army service has impaired his health.

Physical examination reveals a fairly well developed and nourished white male. Blood pressure 118/70. Otherwise, physical examination negative. Laboratory examinations are within normal limits.

The diagnosis made in this case is Psychoneurosis—Neurasthenic Type.

We are enclosing a list of the veterans in the institution at the present time.

Very truly yours,

/s/ Byron J. Hughes
Supt.

RM:RS
Enc.

[fol. 102] EXHIBIT 6C

EXCERPTS FROM REQUEST FOR PHYSICAL EXAMINATION

* * * *

REMARKS:

Request examination of veteran by an neuropsychiatrist. Report to show background of case, reason for being committed to Winnebago State Hospital, whether supervision is required, why veteran has been confined to Winnebago State Hospital for such a long time, adjustment before hospitalization and what is veteran doing now at Winnebago State Hospital, clinical and laboratory findings and diagnosis.

Note letter from Winnebago Hospital dated 10-8-42, in file.

NOT SERVICE CONNECTED

PSYCHONEUROSIS, NEURASTHENIA, SEVERE.
MENTAL DEFICIENCY, MORON, COMPETENT.
ASTIGMATISM, CORRECTED.

THIS CANCELS ALL PREVIOUS 2587's

(Originating office) WOOD, WISCONSIN AR:ast

(Date) 10-19-42

(Signature and title) DAVID E. JUDE, Adj. Officer

[fol. 103] EXHIBIT 6D

VETERANS ADMINISTRATION
DOWNEY, ILLINOIS

Admitted February 23, 1943

EXCERPTS FROM REPORT OF NEUROPSYCHIATRIC EXAMINATION
(FIRST ADMISSION)

* * * * *

[fol. 104] PREVIOUS HOSPITALIZATIONS:

1. National Home Hospital, Wisconsin (VA, Wood) October, 1930, chronic arthritis, left knee joint, with exostosis at right shoulder. Vericose veins, bilateral, myopia and astigmatism.

2. VA, Dayton, Ohio, September 7, 1932 to July 1934, Diagnosis: hysteria severe, with conversions; marked tremor of legs and thighs, which do not correspond to any organic nervous pathology; and tachycardia.

3. VA, Los Angeles, California, November 26, 1934 to May 22, 1935. Diagnosis: C.P.I. with inadequate personality; psychoneurosis, hysteria, moderately severe; arthritis, chronic, hypertrophic; cervical, dorsal and lumbar spine, with slight limitation of motion; and colitis, chronic, spastic.

4. VA, Dayton, Ohio, May 29, 1935 to January 3, 1936, diagnosis: Hysteria, severe, with conversions, competent; tachycardia, mild.

5. VA, Wood, Wisconsin, November 2, 1936. Goitre, cystic, mild, competent; varicose veins, bilateral, moderate symptoms. (examination)

6. VA, Wood, Wisconsin, examination, April 28, 1937. Chronic catarrhal otitis media; myopia; astigmatism; presbyopia; deviation, nasal septum; blepharon, right eye; myocardial insufficiency of chronic invalid tendencies; no manifest pulmonary pathology; arthritis, left knee; BMR; plus 49.

[fol. 105] 7. State Hospital, Winnebago, Wisconsin, August 3, 1939 to October 4, 1939. Diagnoses: Psychosis, with other somatic diseases—amytrophic lateral sclerosis.

8. VA, Wood, Wisconsin, October 4 to November 22, 1939. Diagnoses: Psychoneurosis neurosthenia, severe, and Mental deficiency, moron, competent.

9. Wisconsin Veterans' Home, Waupaca, Wisconsin, December 1, 1939 to January 16, 1940. Diagnoses: Psychoneurosis, mild; arthritis, shoulder, moderate; varicose veins, left, severe; sacro-iliac osteo-arthritis, mild.

10. VA, Biloxi, Mississippi, January 19-20, 1940. Diagnoses: Neuro-circulatory asthenia, mild; C.P.I. with social and economic inadjustability.

11. VA, Dayton, Ohio, February 8 to February 20, 1940. Diagnoses: C.P.I. with conscious malingering, without psychosis, and competent; arthritis, chronic, lumbar spine; varicose veins, bilateral, mild.

12. State Hospital, Winnebago, Wisconsin, September 22, 1941 to February 23, 1943. Diagnoses on admission: Psycho-neurosis neurosthenic type. Diagnosis on discharge: Dementia Praecox, paranoid type, and incompetent.

13. VA, Downey, Illinois, February 23, 1943. Present hospitalization.

PRESENT ILLNESS:

Patient alleges that his disability started while in the service. He complained of a sore back and a sick stomach when he returned to Rhinelander, Wisconsin after his discharge. He took tablets and dieted for this. Affidavits of friends state he was "thin and weak and could not work regularly". He resumed painting, on and off, not more than three months at a time, up to 1929, when patient felt that he was too sick to work. He bought his own medicine and prescribed for himself; digitalis, strychnine, bromides, etc. In 1929, he went to the Soldier's Home, Milwaukee, Wisconsin, (now VA, Wood) for one week. He traded a watch with a fellow; got into trouble, and left. He received disability allowance, 1930 to 1933, and

went south. He was examined at the National Home Hospital, Wisconsin (VA, Wood), October 1930, complaining of headaches, bad eyesight, broken left knee joint and rheumatism, right shoulder. Was diagnosed as stated above, and it was felt that hospitalization was not indicated. After his disability allowance was spent he entered VA, Dayton, Ohio, September 7, 1932 and was diagnosed as Hysteria, severe, with conversions, and marked tremor of, legs and thighs which to not correspond to any organic nervous pathology; and tachycardia. He had leave from Dayton from May 23 to July 1, 1934. Meanwhile his pension and compensation claim was rejected November 21, 1933, which he appealed on numerous occasions, getting affidavits at various times. His appeals of January 25, 1934, September 1, 1934, September 4, 1934, January 8, 1935, February 23, 1935, December 1, 1936, July 19, 1937 and October 4, 1938 and November 1, 1939, also being rejected. Veteran entered VA, Los Angeles, California, November 26, 1934 and was diagnosed C.P.I. with inadequate personality; psychoneurosis hysteria, and others. He was placed on domiciliary status January 8, 1935 and discharged May 22, 1935. Veteran was again admitted to VA, Dayton, Ohio, May 29, 1935; diagnosis, hysteria, severe, with conversions, competent. He went on leave Nov. 29, 1935 and was discharged January 23, 1936 at his own request. He returned to Rhinelander for affidavits and medical certificates. These considered him "as totally disabled, mentally and physically", according [fol. 106] to one physician. As a case of "auricular fibrillation" by another, and as "old chronic arthritis, left knee, right shoulder, patient rapidly developing into a neuropathic condition, due to worries of his disability" by a third physician. Patient was examined at VA, Wood, November 2, 1936 and April 28, 1937. On the latter occasion B.M.R. was plus 49. He returned to Rhinelander in August, 1937 and again obtained affidavits, including a physician's affidavit, whose impression was "Psychoneurosis, neurosthenia, moderately severe, and that he is unable to adjust himself socially".

Veteran was admitted to State Hospital, Winnebago, Wisconsin, September 23, 1939 and transferred to VA, Wood

where diagnosis "amyotrophic lateral sclerosis, mentally incompetent" was given October 4, 1939. At this time he stated that he heard himself advertised over the radio in a disparaging manner, but refused to give specific details. He claims he was injured by spinal punctures. He was observed on a closed ward and diagnosis of psychoneurosis, neurosthenia, severe, and mental deficiency, moron, competent, was made. Examiner believed patient was severely incapacitated as regards industrial adaptability. He was discharged November 22, 1939. He entered the Wisconsin Veterans Home, Waupaca, December 1, 1939, and was discharged January 16, 1940 at his own request. Diagnosis: psychoneurosis, mild, and others. He went south and was admitted to VA, Biloxi, Mississippi, January 19, 1940, but went AWOL the next day and he was disciplinarily discharged. Diagnosed: neurocirculatory asthenia, mild; C.P.I. with social and economic inadjustability. Claimant is noted to have been accepted for domiciliary care but refused to certify to the truth of answers to questions, and left, rather than submit to an N.P. examination. He then went to Dayton and was admitted February 8, 1940 as an emergency. Diagnosis: psychosis, undiagnosed, but was discharged as the emergency was over and the Biloxi discharge was disciplinary. Diagnosis: C.P.I. with conscious malingering, without psychosis, and competent. He was described as very belligerent and uncooperative. He complained of arthritis, heart trouble, stomach trouble, nervousness, electric shocks in the flesh of his arms, carried his own stethoscope and took his own I.Q.S., strychnine, grains 1/30, digitalis, etc. He tried watch making for a short time in Dayton; returned to Rhinelander and was admitted to the State Hospital at Winnebago in September, 1941, diagnosed: psychoneurosis, neurosthenia. In their examination of January 13, 1943 their report mentioned spinal puncture of August 2, 1939, giving Ross Jones faintly positive and coloidal gold 2333210000. They repeated this September 25, 1939 and results were entirely negative, including a flat curve. In August, 1939, his commitment papers stated he was "characterized by depression and delusion". Patient was incoherent and antagonistic towards his surroundings. He thought people were going

to shoot him; that his food was poisoned, and at times wished for kerosene so he could burn down the building. He complained of hearing singing voices in his ears. On admission, September 22, 1941 he was noticed to be irritable, seclusive, aloof, superior in attitude; would not work, and when observed, had marked difficulty in walking, though not when unobserved. He was antagonistic, disagreeable, suspicious, indifferent, careless of personal appearance, tied his trousers with a rag, and went without shoe laces in his shoes, and did not onject to staying on an untidy ward. He was sometimes abusive and profane toward personnel. On October 7, 1941 he spoke vaguely [fol. 107] of speculating in gold. He claimed that while at Dayton he invented a radio without any wires and with no built in aerial. Says he destroyed the parts of this radio and no one else would appreciate it or be intellectually able to understand it. He was getting short of money so he tore up the plans as someone might have stolen them. Claimed also that at the Wisconsin Veterans Home there were three doctors; two legal and one illegal, and they mixed something in his medicine. He thinks it was arsenic. He told the orderly "don't bring that stuff, I don't want it", but there was an argument and they threw him on his face; scratched it up and called the sheriff who took him to the State Hospital at Winnebago. "They treated me like a dog. One of the attendants grabbed me by the neck and tried to choke me. The food is no good, they throw garbage at you". Diagnosed: D.P.P., incompetent, and transferred to this facility February 23, 1943.

• • • •

[fols. 108-111] • • •

[fol. 112] The patient is considered by the examiner as a paranoid praecox with a psychoneurotic and a mental deficiency background.

• • • •

[fol. 113] REMARKS:

Claimant is not bedridden. He is able to travel, one attendant being necessary in traveling. He is considered insane and incompetent at this time. (Incompetent meaning that he presents findings in conformity with R&P 6902).

Claimant has a complete social and economic inadaptability at this time.

The diagnoses and recommendations in this case were concurred in by a majority to the members of the staff on April 9, 1943 and are hereby certified to be the members of the board, whose signatures are hereunto affixed.

• • • • •

[fol. 114] • • •

[fol. 115] EXHIBIT 6F

Exhibit 6 F

VETERANS ADMINISTRATION
Medical Form 10141
Rev. Oct. 1945

CLINICAL RECORD

WARD SURGEON'S PROGRESS AND TREATMENT RECORD

Ward surgeons will record on this sheet the diet, treatment, complications, changes of diagnosis, intercurrent diseases, and daily progress of the case. Adm. 2/23/43 Diag. Dementia Praecox, paranoid type

DATE	DIET	TREATMENT	DAILY NOTES	WARD
7-5-43			This patient has been residing on Ward 51 since April 22, 1943. At first he was rather anxious to be discharged and has frequently asked the examiner to release him as he had some unfinished business with the Veterans Administration. He showed the usual interest in his surroundings, seemed to be fairly communicative with other patients. The last few weeks, however, patient's general interest in his surroundings has slumped down and he has been frequently seen to sit with his head down as if he is talking to himself. He has not asked the examiner to go home for a few weeks. He goes out daily to the occupational therapy shop where he works in the Arts and Crafts. Patient has been quiet, cooperative, and neat in his appearance. He is apparently at present undergoing a period of depression. B. ERPS, M.D.	
7-14-43			A few days ago this patient began complaining that he feels poorly, appears to be staggering, and assumed marked invalidal reactions. He complained of vague aches and pains and he was therefor sent to 1-C. After resting in bed one day, patient stated he got up because he was afraid if he stayed longer in bed he would become weaker. An EKG shows patient to have some myocardial damage. Patient was returned today from 1-C and he states he feels better only generally weak. He does not appear as depressed as he was formerly. He expressed willingness to return to the Arts and Crafts. It appears that he accomplishes very little in the Arts and Crafts. His thoughts are continually occupied with the idea of leaving here and go to Dayton, Ohio, Home where he can prosecute his claims for pension or compensation. He has no hallucinations or delusions otherwise. B. ERPS, M.D.	
9/29/43			Patient has been tried on several O.T. assignments and is unable to adjust on detail ward because of his somatic delusions and refuses to cooperate in any attempt to stimulate him to take interest in his progress. Ideas all fixed on getting compensation for his "total disability". Transferred to Building 9 for reclassification. GEO. L. MOSBY, M. D.	
10/29			Decided for this place. Has somatic complaints upon which he is fixated. The weather change will improve depressed mood. I advise to keep hospitalized. Would like to see	

WARPOUSKE Adam B. NSC 1 628 265 5103
(Surname) (Given names) (C. No.)

WARD SURGEON'S PROGRESS AND TREATMENT RECORD (over)

115

DATE	DIET	TREATMENT	DAILY NOTES	WARD

he would like to go to Dayton but has no definite ideas of procuring employment at present. Appears - fair contact. Smiles at times. Cooperative.

Kuhlman

ward

Building Parole granted

so

6-5-45 Transferred from 125 to 66 Kuhlman

Discharge

This patient was presented before the staff on 7-5-45 for consideration of discharge from the hospital. After reviewing his case history and interrogating patient it was determined that patient had sufficiently improved from his psychosis to be allowed to leave the hospital although marked hyprochromedical residuals are still present, it was felt that these are in themselves not sufficient to prevent patient's adjustment on the outside. Patient felt that with the pension of $50.00 a month and light jobs that he can do on the outside he can get along. No delusions or hallucinations could be elicited at this time. Patient assumed a marked normal reaction when he appeared before the board otherwise there was anything of moment. Patient also has a chronic mydo cardial condition which was shown by EKG. He was considered competent for VA purposes. On 7-10-45 he was discharged from the hospital maximum hospital benefit. Patient proceed to Dayton, Ohio where he has friends and acquaintances with them he will reside.

[redacted] B. Ed., M.D./p

Warpaneke, Adam B. 75 [illegible] 5703

[fol. 116] EXHIBIT 6G

VETERANS ADMINISTRATION

FILED
8-30-
J.W.C.

RATING SHEET

Date August 25, 1945

Claimant's name: HARPOONIKE, Adam B. C- ft 1628 265

Occupational determination

Dates enlisted 5-2-18 Dates discharged 2-8-19

Character of discharges Honorable Dates of last examination 7-10-45 Hosp. Rpt.

In stating the ratings below, the effective Administration's Regulations and Instructions applicable shall be followed

(B) PERMANENT TOTAL FROM 10-10-42
Regulation 1(a), Part III, Paragraph 1(a)
DEMENTIA PRAECOX, PARANOID TYPE, COMP.
DISEASE OF THE HEART, CLASS II
OSTEOARTHRITIS, HYPERTROPHIC, LUMBAR, MILD
VARICOSE VEINS, BILAT., MILD
PLEURISY, FIBRINOUS, CHRONIC
DEFECTIVE VISION, DEAFNESS, PARTIAL, BILAT.
MODERATE, DEVIATION, NASAL SEPTUM, LEFT, MOD.

NOTE:

Hospital report showing condition at time of discharge shows veteran is competent. Veteran is unemployed and unemployable.

Re-examination scheduled for 1 year.

RECEIVED AUG 30 1945

Ex. L 6 (g)

M.C.

[fol. 117] EXHIBIT 6H

VETERANS ADMINISTRATION
Administration Forms Staff
Form approved by
Comptroller General U. S.
November 15, 1945

E 1 1 6-H

File No. 1628265
ORIGINAL

DECISION OF QUESTIONS OF FACT AND LAW

SUPPLEMENTAL AWARD BRIEF FACE

(Disability—Death—Compensation—Pension)

ADAM BENJAMIN WARPOUSKE (Name of veteran) PVT. ORD. DET. 69TH INF. (Rank and organization)

C/O EDW. W. MYERS. 638 REIBOLD BLDG. DAYTON, OHIO. (Name and address of payee)

Class of {pension} now being paid PUB. 2-73RD CONG., AS AMENDED. REG. 1(A) PART III (Title of act and section or regulation)

Date on which basic decision of fact and law was approved .....

If award is increased, give date evidence of entitlement was received .....

Is there any claim of the United States subject to recovery or offset? ..... If so, state amount, $ ..... and how to be recovered .....

Reason for amendment (state fully and completely all pertinent facts, such as disability rating showing degree of disability, effective date thereof, service connection, etc., date of birth, period of hospitalization, etc.):

RTG. 8-25-45. VETERAN RATED COMPETENT FOR V.A. PURPOSES, PAYMENTS TO MANAGER V.A. DOWNEY, ILLINOIS DISCONTINUED 7-31-45. TO PAY VETERAN DIRECT. VETERAN WILL BE IN CONTINUOUS (over) RECEIPT OF PERMANENT AND TOTAL PENSION FOR 10 YEARS ON 10-10-52.

Pursuant to the above the claimant is entitled to the following award of ~~compensation~~ pension under the provisions of the act of

3-20-33 PUB. 2-73RD CONG., AS AMENDED

5-27-44 PUB. 313-78TH CONG.

New award	Monthly payment	Commencing date	Ending date	New award	Monthly payment	Commencing date	Ending date
P.T.	50.00	7-10-45	10-9-52				
P.T.	60.00	10-10-52					

Less 6 (L)

LESS PRIOR PAYMENTS

Submitted 9-12-45, 19 by John W. Culbertson Title ADJ.

I, the undersigned, an officer of the Veterans Administration, duly and lawfully authorized to make decisions of questions of fact and law affecting claimants to benefits under all laws governing the payment of compensation or pension or accrued amounts of pension, compensation, or emergency officers' retirement pay, do hereby constitute in pursuance of such authority, the foregoing statements as my decision of fact and law. (Public No. 836, 71st Congress and Sec. 8, title 1, Public No. 2, 73d Congress.)

Approved 9-12, 1945 By John [illegible] Title AUTH. OFF.

117

Remarks (Continued)

Vet Discharged V.A. Downey, Illinois 7-10-45-
Rel: Self only AR 615-256(b)

[fols. 118-126] * * *

[fol. 127] EXHIBIT 7B

EXHIBIT 7-B

AWARD OR DISALLOWANCE SHEET

R. O. IDENT. NO. 30

☐ ORIGINAL AWARD ☒ AMENDED AWARD ☐ INSTITUTIONAL AWARD ☐ DISALLOWANCE

INSTRUCTIONS —If record is not used to fill in information in section, then fill in only those items which are underlined

1. NAME: Warbrooke, Adam Benjamin 16828265
General Delivery
Fort Bartel, Tex.

2. DEGREE OF DISABILITY: P & T.

CHECK APPLICABLE SERVICE(S): ☐ WAR SERVICE ☐ PEACE SERVICE ☒ NONSERVICE

DATE OF RATING: 1-20-49

PAYEE IS ENTITLED TO: ☐ COMPENSATION ☒ PENSION ☐ RETIRED

UNDER PROVISIONS OF ACT OF: 3-20-33 as amended.

AWARD DATA

3. NAME OF DEPENDENT	RELATIONSHIP	DATE OF BIRTH OR MARRIAGE	DATE OF CLAIM	DATE PROOF RECEIVED
none				

4. PAYEE (If other than above, show name and address)	MONTHLY PAYMENT	COMMENCING DATE	ENDING DATE
Same	60.00	10-18-48	A. P. D.

5. REMARKS: Payments previously discontinued by Amended Award approved 4-14-47, dep't D. L. P., because of veteran's failure to submit Form 619. Form finally received 10-8-48, more than 1 yr after requested. Payments reinstated as of 10-18-48 per Ar PA 1893. Birth record requested.

DISALLOWANCE DATA

6. BASIS FOR DISALLOWANCE (Circle number of reason for disallowance)

1. Not a veteran of wartime service.
2. In receipt of active duties or retirement pay.
3. Discharged under dishonorable conditions.
4. Less than ☐ 90 ☐ 60 days wartime service.
5. Disability incurred not in line of duty.
6. Claimant's failure to prosecute.
7. Death of sole willful misconduct.
8. Disability not incurred in wartime service.
10. Disability not incurred in peacetime service.
11. Less than 10 percent or 0 percent disability.
12. Disability not permanent and total.
13. Income sufficient to bar entitlement.
14. Disability not shown at time of last examination.
15. Disability not shown by evidence of record.
16. Constitutional or developmental abnormality.
17. Other.

SUBMITTED (Adjudicator)	DATE	APPROVED (Authorizing officer)	DATE
P. H. Nelson	1-28-49	[signature]	1-28-49
CONCURRED (Adjudicator)	DATE	APPROVED (Authorizing officer)	DATE
CONCURRED (Adjudicator)	DATE	APPROVED (Authorizing officer)	DATE
CONCURRED (Adjudicator)	DATE	APPROVED (Authorizing officer)	DATE

[redacted]

[fol. 128] EXHIBIT 7C

Exhibit 7-C

AWARD OR DISALLOWANCE SHEET

R. O. IDENT. NO. 30

☐ ORIGINAL AWARD ☒ AMENDED AWARD ☐ INSTITUTIONAL AWARD ☐ DISALLOWANCE

INSTRUCTIONS: If stencil is not used to fill in information in caption, then fill in only those items which are unshaded

1 NAME: Warpenske, Adam Benjamin — C NO. 1628265 — ADDRESS — SERVICE SERIAL NO.

CITY — STATE — DATE OF CLAIM — TYPE — WAR

TYPE DISCHARGE — BRANCH OF SERVICE — ACTIVE DUTY DATE — DATE E. T. D.

DATE OF BIRTH — PLACE OF BIRTH — RANK — PAY GRADE

2 DEGREE OF DISABILITY: P & T.

CHECK APPLICABLE SERVICE(S): ☐ WAR SERVICE ☐ PEACE SERVICE ☒ NONSERVICE

DATE OF RATING: 1-20-49

PAYEE IS ENTITLED TO: ☐ COMPENSATION ☒ PENSION ☐ RETIRED

UNDER PROVISIONS OF ACT OF: 3-20-33 as amended.

AWARD DATA

3 NAME OF DEPENDENT	RELATIONSHIP	DATE OF BIRTH OR MARRIAGE	DATE OF CLAIM	DATE PROOF RECEIVED

4 PAYEE (If other than above, show name and address)	MONTHLY PAYMENT	COMMENCING DATE	ENDING DATE
Same	60.00	10-18-48	10-9-52
	72.00	10-10-52	
			L.P.P.

5 REMARKS: Veteran will be in receipt of pension for 10-9 days, on 10-10-52. Date of birth not known, vet

DISALLOWANCE DATA

6 BASIS FOR DISALLOWANCE (Circle number of reason for disallowance)

1 Not a veteran or wartime service.
2 In receipt of active service or retirement pay
3 Discharged under dishonorable conditions.
4 Less than ☐ 70 ☐ 90 days wartime service
5 Disability occurred not in line of duty
7 Claimant's failure to prosecute.
8 Result of own willful misconduct.
9 Disability not incurred in wartime service
10 Disability not incurred in peacetime service
11 Less than 10 percent or 0 percent disability
12 Disability not permanent and total
13 Income sufficient for own settlement
14 Disability not shown at time of last examination.
15 Inability not shown by evidence of record.
16 Constitutional or developmental abnormality
17 Other.

SUBMITTED (Adjudicator)	DATE	APPROVED (Authorizing officer)	DATE
J. H. Nelson	2-25-49	John Gamma	2-25-49
CONFIRMED (Adjudicator)	DATE	APPROVED (Authorizing officer)	DATE
CONFIRMED (Adjudicator)	DATE	APPROVED (Authorizing officer)	DATE
CONFIRMED (Adjudicator)	DATE	APPROVED (Authorizing officer)	DATE

Exh 7-C

[fol. 129] EXHIBIT 7D

Exhibit 7-D

AWARD OR DISALLOWANCE SHEET

R O (CLIENT NO) 53

☐ ORIGINAL AWARD ☒ AMENDED AWARD (Resumed) ☐ INSTITUTIONAL AWARD ☐ DISALLOWANCE

INSTRUCTIONS If stencil is not used to fill in information in caption, then fill in only those items which are unshaded C-1628.266

1 NAME (CPR) WARDDUSKE, ADAM BENJAMIN
ADDRESS GEN DEL SERVICE SERIAL NO
CITY PORT ISABEL STATE TEXAS DATE OF CLAIM TYPE WAR I
TYPE DISCHARGE BRANCH & SERVICE ACTIVE DUTY DATE DATE B A D
DATE OF BIRTH PLACE OF BIRTH RANK RACE SEX

2 DEGREE OF DISABILITY: P+T
CHECK APPLICABLE SERVICE(S): ☐ WAR SERVICE ☐ PEACE SERVICE ☒ NONSERVICE
DATE OF RATING: 1-20-49
PAYEE IS ENTITLED TO ☐ COMPENSATION ☒ PENSION ☐ RETIRED
UNDER PROVISIONS OF ACT OF: P.L. 2, 79 c, a a

AWARD DATA

3 NAME OF DEPENDENT	RELATIONSHIP	DATE OF BIRTH OR MARRIAGE	DATE OF CLAIM	DATE PROOF RECEIVED

4 PAYEE (If other than veteran, show name and address)	MONTHLY PAYMENT	COMMENCING DATE	ENDING DATE
Same	60.00	3-1-50	10-9-52
	72.00	10-10-52	
			Issue PP

5 REMARKS: Resumed award. Final payment stopped D.L.P by 521 approved 3-1-50 statement of income for 1949 received 3-13-50 Rel-S

DISALLOWANCE DATA

6 BASIS FOR DISALLOWANCE (Circle number of reasons for disallowance)
2 Not a veteran of wartime service
3 In receipt of active service or retirement pay
4 Discharged under dishonorable conditions
5 Less than ☐ 70 ☐ 90 days wartime service
6 Disability incurred not in line of duty
7 Claimant's failure to prosecute
8 Result of own willful misconduct
9 Disability not incurred in wartime service
10 Disability not incurred in peacetime service
11 Less than 10 percent or 0 percent disability
12 Disability not permanent and total
13 Income sufficient to bar entitlement
14 Disability not shown at time of last examination
15 Disability not shown by evidence of record
16 Constitutional or developmental abnormality
17 Other

SUBMITTED (Adjudicator)	DATE	APPROVED (Authorization officer)	DATE
(illegible)	3-22-50	(illegible)	3-24-50
CONFIRMED (Adjudicator)	DATE	APPROVED (Authorization officer)	DATE
CONFIRMED (Adjudicator)	DATE	APPROVED (Authorization officer)	DATE
CONFIRMED (Adjudicator)	DATE	APPROVED (Authorization officer)	DATE

(illegible) 7(d)

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[fol. 130] EXHIBIT 7E

E.1.1.1.7.E.

Resumed

AWARD OR DISALLOWANCE SHEET

1. R. O. INDENT. NO. 53

2. TYPE OF AWARD: ☒ ORIGINAL AWARD ☐ AMENDED AWARD ☐ INSTITUTIONAL AWARD ☐ DISALLOWANCE — C# 1-629-265

INSTRUCTIONS.— If ground is not used to fill in information in caption, then fill in only those lines which are underlined

LAST NAME — FIRST NAME — MIDDLE NAME	C-NO.	3. DEGREE OF DISABILITY	4. CHECK APPLICABLE SERVICE(S)	5. DATE OF RATING
Warpouske, Adam Benjamin	SERVICE — SERIAL NO.	PAI	☐ WAR SERVICE ☐ PEACE SERVICE ☒ NONSERVICE	1-20-49
ADDRESS: General Deliv.				
CITY: Hot Springs STATE: Ark.	DATE OF CLAIM	TYPE	WAR	
TYPE DISCHARGE [redacted]	ACTIVE DUTY DATE	DATE R. A. D.		

6. PAYEE IS ENTITLED TO ☐ COMPENSATION ☒ PENSION ☐ RETIREMENT PAY UNDER PROVISIONS OF ACT OF P.L. 730 Con

7. AWARD DATA

A. NAME OF DEPENDENT	RELATIONSHIP	DATE OF BIRTH OR MARRIAGE	DATE OF CLAIM	DATE PROOF RECEIVED
1.				
2.				
3.				
4.				
5.				
6.				

B. PAYEE (If other than veteran, show name and address)	TOTAL AWARD	MONTHLY PAYMENTS	COMMENCING DATE	ENDING DATE
1. Same		72.00	1-20-49	
2.				
3.				
4.				
5.				
6.				Exp 00

8. REMARKS: Award is limited to payments for disallowance of compensation for 1950 and revoking no bar to vets benefits

Rehab

8. DISALLOWANCE DATA

A. DATE FOR DISALLOWANCE (Check number of reasons for disallowance)
1. NOT A VETERAN OF WARTIME SERVICE
2. NO RECORD OF ACTIVE SERVICE OR RETIREMENT PAY
3. DISCHARGED UNDER DISHONORABLE CONDITIONS
4. [redacted]
5. NOT DISABLED IN WARTIME SERVICE
6. DISABILITY NOT INCURRED IN WARTIME SERVICE

RECORDED, ABSTRACT UNIT APR 13 1951

DISABILITY NOT INCURRED IN PEACETIME SERVICE
DISABILITY NOT PERMANENT OR PRESENT DISABILITY
OTHER (Specify) Exh 7(2)

10. SIGNATURE (AUTHORIZED SIGNATURE)	11. DATE	12. SIGNATURE (AUTHORIZED SIGNATURE)	13. DATE
L. A. Clubbs	4/12/51	W. A. Strauss	4-12-51

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[fol. 131] EXHIBIT 8

Exhibit 8
No. 1628 265
3029 Ft. St. Paul - 3.2.62

CLINICAL RECORD — NARRATIVE SUMMARY

DATE OF ADMISSION	DATE OF DISCHARGE	NUMBER OF DAYS HOSPITALIZED
3-1-56	-19-56	

(Sign and date at end of narrative)

HISTORY: This 68-year old W/M was admitted to the VAH, Portland, Oregon, on 3/1/56, in transfer from the Multnomah Hospital. He was admitted to the Multnomah Hospital on 1/5/56, with a left hemiplegia and inability to speak or swallow. Examination at that time revealed a fracture of the left hip which was pinned on 1/11/56. Chest x-rays revealed infiltrate which was treated with chloromycetin. During that hospitalization a tracheostomy was performed and the patient has been maintained on tube feedings since.

PHYSICAL EXAMINATION: This emaciated, elderly, white male appeared very weak and chronically ill on admission. His temperature was 99.2 rectally with a pulse of 96 and a blood pressure of 120/50. Cataracts were present in both eyes and the fundi could not be visualized. There was flattening of the left side of the face and deviation of the tongue to the left on extension. Rhonchi were present in both lung fields but fine crepitant rales were present at both bases. The heart was normal in size to percussion with a normal sinus rhythm. No murmurs present. A tracheotomy opening was present without a tube in place and the opening had begun to close. A flaccid paralysis of the left arm and a marked paresis of the left leg was present with wasting of the musculature of all extremities. Decubiti and excoriations are present over the hips, buttocks and feet. The patient appeared disoriented and unable to speak but occasionally responded to simple commands. He was lethargic but could be slightly aroused without difficulty. There was a left deep tendon reflex preponderance with a positive Hoffman on the left. The plantar responses were flexor bilaterally. The left umbilical superficial reflexes were present. Hypalgesia to pin prick was believed to be present over the left side but could be not definitely proven. A left palmomental reflex was present.

LABORATORY EXAMINATIONS: Serology was negative. Urinalysis revealed a 2+ albumin with numerous bacteria and WBC's. WBC and differential were within normal limits. Red hemogram revealed a hemoglobin of 11.2 grams with a hematocrit of 30.5. The routine blood chemistries were within normal limits. A lumbar puncture revealed initial pressure of 60 mm. of water. The cerebral spinal fluid revealed a slight increase in globulin with a total protein of 60 mgm.%. The remainder of the spinal fluid examination was within normal limits.

X-RAY EXAMINATIONS: X-rays have not been taken at this hospital to date (3/6/56).

HOSPITAL COURSE: On admission the patient was continued on tube feedings and attempts were made to get the patient up in a wheel chair for a short time each day. He has remained afebrile but there has been no clearing of his sensorium. The patient is frequently very restless and on repeated occasions has pulled out gastric tube used to feed him.

(Use additional sheets of this form (Standard Form 503) if more space is required)

SIGNATURE OF PHYSICIAN	DATE	ORGANIZATION
W. S. BECK, M. D./eh		1 628 265 VAH, Portland, Oregon

PATIENT'S LAST NAME-FIRST NAME-MIDDLE NAME	HOSPITAL NO.	WARD NO.
WILLOUGHBY, Adam Benjamin	F 307 570	GF

NARRATIVE SUMMARY (Standard Form 502)

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[fol. 132]

BLOCK RO FORTLAND ORE

CLINICAL RECORD	NARRATIVE SUMMARY	
DATE OF ADMISSION	DATE OF DISCHARGE	NUMBER OF DAYS HOSPITALIZED
2-1-56	3-19-56	

(Sign and date at end of narrative)

Attempts were continued to improve the patient's nutrition by tube feeding and parenteral fluids. Also attempts were made to encourage the patient to take food orally which met with varying success. Chest x-ray on 3-6-56, again showed the abnormal densities in the right apical region which had been demonstrated at the Multnomah County Hospital. The patient's course remained stationary with continued [illegible] until 3-17-56, when the patient became more lethargic and pale. The patient was observed at that time to be rather cyanotic. On 3/18/56, the patient became febrile, the temperature reaching 102.4° rectally. The lethargy deepened [illegible] by 3/19/56, and a chest x-ray at that time revealed infiltrates in the [illegible] lower lobe. Patient remained febrile and the breathing became labored re- [illegible] frequent tracheal aspirations. The patient was started on chloromycetin but the respirations became more shallow and the patient quietly expired. The patient was pronounced dead at 4:45PM on 3/19/56.

[illegible]: (1) Bronco pneumonia, treated, expired. 3-1-56.

(2) Cerebral thrombosis of the right middle cerebral artery, due to arteriosclerosis, [illegible];

(3) Encephalomalacia of the fronto-parietal area on the right, due to thrombosis, treated, expired.

(4) [illegible] bilaterally, intra- [illegible]. X-ray 3-7-

Report APPROVED E C Goodell M D CHAIRMAN, DISCHARGE BOARD

(Use additional sheets of this form (Standard Form 503) if more space is required)

PHYSICIAN	DATE	IDENTIFICATION NO.	ORGANIZATION
Jas. Rex, M.D./ah	3/19/56	C 1 628 265	VAH, Portland, Oregon

PATIENT'S IDENTIFICATION (Use typed or written entries when Master Card, Desk Register Card, Admission Record, Clinical Record or medical roentgenogram is available)

HARPOONER, Adam Benjamin

Page 2.

REGISTER NO.	WARD NO.
P 107 570	07

NARRATIVE SUMMARY (Standard Form 502)

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COPY

SUPREME COURT, U.S.
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JAMES R.

No. 23

In the Supreme Court of the United States

OCTOBER TERM, 1960

THE UNITED STATES OF AMERICA, AS TRUSTEE FOR THE SOLE USE AND BENEFIT OF THE GENERAL POST FUND, PETITIONER

v.

STATE OF OREGON, ACTING BY AND THROUGH THE STATE LAND BOARD, AND PORTLAND TRUST & SAVINGS BANK, ACTING BY AND THROUGH THE STATE LAND BOARD

IN THE MATTER OF THE ESTATE OF ADAM B. WARPOUSKE

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OREGON

J. LEE RANKIN,
Solicitor General,
GEO. S. LEONARD,
Acting Assistant Attorney General,
ALAN S. ROSENTHAL,
DAVID L. ROSE,
Attorneys,
Department of Justice, Washington 25, D.C.

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In the Supreme Court of the United States

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No. —

THE UNITED STATES OF AMERICA, AS TRUSTEE FOR THE SOLE USE AND BENEFIT OF THE GENERAL POST FUND, PETITIONER

v.

STATE OF OREGON, ACTING BY AND THROUGH THE STATE LAND BOARD, AND PORTLAND TRUST & SAVINGS BANK, ACTING BY AND THROUGH THE STATE LAND BOARD

IN THE MATTER OF THE ESTATE OF ADAM B. WARPOUSKE

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OREGON

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Oregon entered in this case on May 18, 1960.

OPINIONS BELOW

The opinion of the Circuit Court of Multnomah County, Oregon (App., *infra*, pp. 41–42) is unreported. The opinion of the Supreme Court of Oregon (App. *infra*, pp. 22–40) is reported at 352 P. 2d 539.

JURISDICTION

The judgment of the Supreme Court of Oregon was entered on May 18, 1960 (App., *infra*, pp. 40–41). The

jurisdiction of this Court is invoked under 28 U.S.C. 1257(3).

QUESTIONS PRESENTED

1. Whether 38 U.S.C. (1952 ed.) 17–17j,[1] which vests in the United States (as trustee for the General Post Fund) the personal property of veterans who die intestate and without heirs while receiving care or treatment in the facilities of the Veterans Administration, requires the existence of a common law contract between the veteran and the United States, and thus does not apply to the property of veterans who were incompetent at the time of their admission to the Veterans Administration facility.

2. Whether Congress can constitutionally provide, as a condition to the furnishing of care or treatment by the Veterans Administration to an incompetent veteran, that if he dies intestate and without heirs his personal property shall vest in and become the property of the United States for the benefit of other veterans.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The United States Constitution provides in relevant part as follows:

> Fifth Amendment:
>
> No person shall * * * be deprived of life, liberty, or property, without due process of law; * * *.
>
> Tenth Amendment:
>
> The powers not delegated to the United States by the Constitution, nor prohibited by

[1] 38 U.S.C. (1952 ed.) 17–17j is now codified as 38 U.S.C. 5220–5228. See fn. 2, *infra*, p. 3.

it to the States, are reserved to the States respectively, or to the people.

2. 38 U.S.C. 17–17j (1952 ed.),[2] the Act of June 25, 1910, 36 Stat. 736, as amended by the Act of December 26, 1941, 55 Stat. 868, provides in pertinent part:

> § 17. *Vesting of undisposed personalty in United States as trustee for General Post Fund.*
>
> Effective ninety days after December 26, 1941, whenever any veteran (admitted as a veteran) shall die while a member or patient in any facility, or any hospital while being furnished care or treatment therein by the Veterans' Administration, and shall not leave surviving him any spouse, next or kin, or heirs entitled, under the laws of his domicile, to his personal property as to which he dies intestate, all such property, including money and choses in action, owned by said decedent at the time of death and not disposed of by will or otherwise, shall immediately vest in and become the property of the United States as trustee for the sole use and benefit of the General Post Fund, a trust fund prescribed by section 725s (b)(45) of Title 31.
>
> The foregoing provisions are conditions precedent to the initial, and also to the further furnishing of care or treatment by the Veterans' Administration in a facility or hospital.

[2] The provisions of this statute were reenacted without significant change by the Act of June 17, 1957 (Title XIX), 71 Stat. 149. The statute was codified by the Act of Sept. 2, 1958, 72 Stat. 1256, as 38 U.S.C. 5220–5228. Since the veteran here died in 1956, we refer throughout this petition to the statute in force at the time, and to the 1952 Code.

The acceptance of care or treatment by any veteran admitted as such to any Veterans' Administration facility or hospital after ninety days from December 26, 1941, and as well the continued acceptance of care or treatment furnished by the Veterans' Administration after said ninety days by any veteran who is then receiving the same shall constitute an acceptance of the provisions and conditions of this subchapter and have the effect of an assignment, effective at his death, of such assets in accordance with and subject to the terms and provisions of this subchapter and the regulations issued in accordance with and pursuant thereto.

§ 17a. *Presumption from death in facility of contract for disposition of property.*

The fact of death of the veteran (admitted as such) in a facility or hospital, while being furnished care or treatment therein by the Veterans' Administration, leaving no spouse, next of kin, or heirs, shall give rise to a conclusive presumption of a valid contract for the disposition in accordance with this subchapter, but subject to its conditions, of all property described in section 17 of this title owned by said decedent at death and as to which he dies intestate.

* * * * *

§ 17c. *Disbursements from Fund; payment of creditors.*

Disbursements from the General Post Fund shall be made by the Division of Disbursements, Treasury Department, upon the order and within the discretion of the Administrator of Veterans' Affairs for the benefit of members

and patients while being supplied care or treatment by the Veterans' Administration in any facility or hospital, and this authority is not limited to facilities or hospitals under direct administrative control of the Veterans' Administration: *Provided, however,* That there shall be paid out of the assets of the decedent so far as may be the valid claims of creditors against his estate that would be legally payable therefrom in the absence of this subchapter and without the benefit of any exemption statute, and which may be presented to the Veterans' Administration within one year from the date of death, or within the time, to the person, and in the manner required or permitted by the law of the State wherein administration, if any, is had upon the estate of the deceased veteran; and also the proper expenses and costs of administration, if any: *And provided further,* That if the decedent's estate be insolvent the distribution to creditors shall be in accordance with the laws of his domicile, and the preferences and priorities prescribed thereby shall govern, subject to any applicable law of the United States.

§17d. *Disposition of remainder of assets; acquisition of assets by the Administrator of Veterans' Affairs.*

The remainder of such assets or their proceeds shall become assets of the United States as trustee for said Post Fund and disposed of in accordance with this subchapter: If there be administration upon the decedent's estate such assets, other than money, upon claim thereof within the time required by law, shall be by the administrator of the estate delivered

to the Administrator of Veterans' Affairs or his authorized representative, as upon final distribution; and upon the same claim there shall be paid to the Treasurer of the United States for credit to said Post Fund any such money available for final distribution. In the absence of administration, any money, chose in action, or other property of the deceased veteran held by any person shall be paid or transferred to the Administrator of Veterans' Affairs upon demand by him or his duly authorized representative, who shall deliver itemized receipt therefor. Such payment or transfer shall constitute a complete acquittance of the transferor with respect to any claims by any administrator, creditor, or next of kin of such decedent.

* * * * *

§ 17g. *Notice to veterans of law.*

The Administrator of Veterans' Affairs shall prescribe a form of application for hospital treatment and domiciliary care which shall include notice of the provisions of this subchapter. Within ninety days after approval hereof similar notice shall be given to each veteran then receiving care in any facility or hospital as described in this subchapter: *Provided, however,* That this requirement shall be met by posting of said notice with a copy of the prescribed form in a prominent place in each building wherein patients or members are housed.

* * * * *

STATEMENT

This case involves the competing claims of the United States (as trustee of the General Post Fund) and the State of Oregon to the net estate from the personal property of a deceased veteran of the armed

services who died intestate and without heirs after being admitted to a Veterans Administration hospital for care and treatment. The claim of the United States, as trustee of the General Post Fund, is founded upon the provisions of 38 U.S.C. 17–17j, *supra*, pp. 3–6. The General Post Fund is used exclusively to provide veterans in facilities of the Veterans Administration with recreational and religious programs and equipment. The State of Oregon's claim is based upon its escheat statute.

The pertinent facts are not in dispute. Adam B. Warpouske served in the Army during World War I. In 1924 he obtained a pension from the Veterans Administration for a non-service-connected mental disability (Ex. 3, p. 3). He was mentally ill for the remainder of his life (App., *infra*, p. 42). Between 1930 and 1945 he was admitted to hospital facilities of the Veterans Administration on fourteen occasions, and spent a total of approximately 10 years in such facilities (Ex. 6d, pp. 2–3, Ex. 6(f)).

In connection with these admissions, the veteran signed a number of application forms in which he agreed that, if he should die intestate and without heirs "while receiving care", his property would vest in the Veterans Administration for use of the Post Fund.[3] Although some psychiatric examinations dur-

[3] The form of the agreement was not identical in each application, but a typical agreement contained the following language: "I agree that, in the event of my death while under care, leaving no heirs at law nor next of kin, all personal property owned by me at the time of my death, including money or choses in action held by me and not disposed of by will,

ing this period indicated that he was incompetent, others indicated that he was competent even though suffering from mental illness.* In 1945 he was discharged from a Veterans Administration hospital in Wood, Wisconsin, as "improved and competent", although still "unemployable" (Exh. 6(f) & (g)). He was awarded a total and permanent disability pension which continued until his death (Ex. 6(h) and Ex. 1, p. 27).

On December 31, 1955, while a resident of Multnomah County, Oregon, the veteran was admitted to the Good Samaritan Hospital in Portland for treatment of a hip fracture and a cerebral hemorrhage (R. 49, p. 18). Because it appeared that he was without funds, on January 5, 1956, he was transferred to the Multnomah County Hospital* for treatment at the expense of the county (R. 49, p. 18). He remained there until March 1, 1956, when he was moved to the Veterans Hospital in Portland (R. 49, p. 18). At the time of his admission to this facility he was incompetent (App., *infra*, p. 42). On March 9, 1956, the Portland Trust Bank was appointed as his guardian (R. 13, 16). There was no evidence that the guardian protested or objected to his remaining in the Veterans Hospital or as to his receiving care and treatment there.

---

whether such property be the proceeds of pension, compensation, retirement pay, or life insurance, or otherwise derived, shall vest in and become the property of the Veterans Administration for the sole use and benefit of the post fund, and that all my personal property shall upon my death, while under care, at once pass to and vest in the Veterans Administration subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within 5 years after my death." (Sec. 12, Ex. 4.)

* See *e.g.* Ex. 5.

Warpouske died on March 19, 1956. A few days before, it had been discovered that he was the sole heir to the estate of his brother, who had died intestate the previous fall while receiving care in a Veterans Administration hospital in Wisconsin (R. 4). By reason of this inheritance, the veteran left a net estate of $13,727.14, of which $971.47 was attributable to unused federal pension funds (R. 34).

Under the provisions of 38 U.S.C. 17–17j, *supra*, the Administrator of Veterans Affairs filed in the Oregon probate court a "Claim for personal Property in Estate" on behalf of the United States, as trustee of the General Post Fund, and the Oregon State Land Board filed a petition for escheat (R. 12, 22). After trial, the Oregon probate court (the Circuit Court for Multnomah County, Department of Probate) found that the deceased was not mentally competent to understand the consequences of his acceptance of hospitalization in the Veterans Administration hospital or to enter into any contract respecting his hospitalization. For that reason it held (App., *infra*, p. 42):

> "* * * the provisions of Section 17, Title 38, United States Code, cannot and do not control the disposition or vesting of his personality at the time of his death."

Consequently, except for that portion of the estate attributable to federal pensions,[5] the court ordered the escheat of the estate to Oregon.

---

[5] The State conceded that the United States was entitled to the remainder of such funds by reason of 38 U.S.C. (1952 ed.) 450(3).

On appeal by the United States,* the Supreme Court of Oregon affirmed. The court expressed the view that 38 U.S.C. 17–17j would be in violation of both the Fifth and Tenth Amendments to the United States Constitution if applied to the estate of a veteran who had no capacity to contract when he entered the hospital (App., *infra*, pp. 29–35). Because of this consideration, the court concluded that the statute should be construed as "sound[ing] in contract" and therefore inapplicable to a veteran who was incompetent at the time he entered the hospital (App., *infra*, pp. 26, 29).

REASONS FOR GRANTING THE WRIT

The Oregon Supreme Court has construed 38 U.S.C. 17–17j, *supra*, pp. 3–6, in a manner which cannot be reconciled with the clear and explicit terms of the statute. Its reading also conflicts with the long-standing administrative interpretation and with the uniform decisions of other state courts applying the statute to the estates of incompetent veterans. Further, the court below has cast doubt upon the constitutionality of the statute as heretofore interpreted. For these reasons, as well as because the question is of recurring importance, review by this Court is warranted.

1. 38 U.S.C. 17, *supra*, pp. 3–4, states without qualification that "whenever *any* veteran shall die at a facility of the Veterans Administration intestate and without heirs, his "personal property * * * *shall immediately vest* in and become the property of the United

*On appeal, the United States contended that 38 U.S.C. 17–17j applied to the instant case, and that as so-applied it was constitutional.

States as trustee for the sole use and benefit of the General Post Fund * * *" (emphasis added). The section goes on to stipulate that "The foregoing provisions are conditions precedent to the initial, and also to the further furnishing of care or treatment by the Veterans Administration in a facility or hospital" and that "The acceptance of care or treatment by any veteran admitted as such * * * *shall constitute* an acceptance of the provisions and conditions of this subchapter and *have the effect* of an assignment, effective at his death, of such assets * * *" (emphasis added). Finally, in Section 17a, *supra*, p. 4, Congress provided that the death of a veteran, while being furnished care or treatment in a Veterans Administration facility, gives rise to a *"conclusive presumption* of a valid contract" for the disposition of his property in accordance with the statute (emphasis added).

We submit that, whether taken separately or together, these provisions require the conclusion that the statute applies to *all* veterans and that the only relevant inquiry is into whether the veteran died intestate and without heirs while admitted as a patient in a V.A. facility. If so, by express Congressional direction his property "shall immediately vest" in the United States.

In arriving at its conclusion that the statute requires that the veteran have possessed contractual capacity at the time of admission, the Oregon Supreme Court did not discuss Section 17. And, insofar as the conclusive presumption provision (Section 17a) is concerned, the court held, in effect, that Congress

could not have meant what it said because, as applied to an incompetent veteran, the presumption would violate the Fifth Amendment (App., *infra*, pp. 28–34).

The Oregon court also suggested that the application of the statute to incompetent veterans would be "basically contrary to the traditional solicitude of the government for the veteran" (App., *infra*, p. 34). Apart from its doubtful relevance, this observation ignores the fact (1) that the statute takes nothing from the veteran, his heirs or the beneficiaries of his testamentary bounty and (2) if it vests in the United States, the veteran's property can be used only for the benefit of other veterans.

2. The decision of the Oregon court holding the statute inapplicable to incompetent veterans is in conflict with the holdings of the courts of last resort of two states. *In re Estate of Skriziszouski*, 382 Pa. 634, 116 A. 2d 841; *In re Gonsky's Estate*, 79 N.D. 123, 55 N.W. 2d 60. The decision is also in conflict with a lower court decision in New York. *In re Bonner's Estate*, 192 Misc. 753, 80 N.Y.S. 2d 122 (Sur. Ct., Queens Co.). We are not aware of any decisions, either in state or federal courts, which agree with the decision below.[7]

In *Skriziszouski*, the Supreme Court of Pennsylvania applied 38 U.S.C. 17–17j to the entire estate of a veteran who was incompetent when he entered a V.A. institution. While the Oregon court endeavored to distinguish the case on the ground that most of the estate was derived from federal pension

[7] None of the cases cited for support by the court below concerned incompetent veterans.

benefits, the opinion of the Pennsylvania court does not make or justify this distinction. Moreover, a lower Pennsylvania court has expressly held that *Skriziszouski* controls regardless of the proportion of the incompetent veteran's estate which can be traced to federal pension moneys. *Estate of Maguire,* 13 D. and C. 2d 247, 7 Fiduc. Rep. 701, (Orphans Ct., Philadelphia). And in *Bonner's, supra,* the New York court applied Sections 17–17j to all the property of an incompetent veteran, including substantial amounts not shown to have been derived from pension benefits.

The Supreme Court of North Dakota has also applied the statute to the estate of an incompetent veteran. *In re Gonsky's Estate, supra.* The Oregon court distinguished *Gonsky* on the ground that the estate in that case was derived from federal pensions and therefore became the property of the United States under another statute, 38 U.S.C. (1952 ed.) 450 (3) (App., *infra,* pp. 37–38). The attempted distinction, however, cannot be squared with the express language of the *Gonsky* opinion that "the facts in this case clearly bring it within the provisions of Sections 17, 17a, 17f, Title 38 USCA", or with the North Dakota court's holding that the property passed to the United States under 38 U.S.C. 17–17j "for the sole use and benefit of the General Post Fund."* 79 N. Dak. at 130 and 136.

* Property passing to the United States by virtue of 38 U.S.C. (1952 ed.) 450 (3) is not used for the General Post Fund but is credited to current appropriations for payment of compensation, insurance, or pensions.

3. Nothing in *United States* v. *Stevens*, 302 U.S. 623, calls for the result reached below. In that case, a competent veteran entered into an express contract for the disposition of his property, pursuant to the Sundry Appropriations Act of June 25, 1910 (36 Stat. 703, 736), the predecessor of 38 U.S.C. 17–17j. This Court found all the requirements of a common law contract, valid under the laws of the appropriate state, and thus did not reach any questions concerning the effect of the federal statute in the circumstances here presented. The Court characterized the statute as one which "directed the terms and conditions" under which veterans can gain admittance to institutions owned and operated by the Federal Government for them. 302 U.S. at 627.

The 1910 Act provided that the "application of any person for membership" in the National Home for Disabled Volunteer Soldiers and the "admission of the applicant thereunder shall be and constitute a valid and binding contract". The managers of the Home were directed to change the form of application to give reasonable notice and "to contain the consent of the applicant" of the conditions imposed by the statute. 36 Stat. 736. This provision was merely a directive, and not a prerequisite to the validity of the contract. The only requirements for a valid contract were "the application" and "the admission of the applicant thereunder." Therefore, even under the 1910 Act the competence of the veteran at the time he made his application was probably irrelevant and the Act applied alike to competent and incompetent veterans.

The 1910 Act was amended by the Act of Dec. 26, 1941, 55 Stat. 868, and became 38 U.S.C. 17–17j. The primary objective of the amendment was to enlarge the coverage of the 1910 Act to include veterans who died while receiving hospital treatment, as well as those who were receiving domiciliary care. H. Rept. No. 609, 77th Cong., 1st Sess.; Sen. Rept. No. 900, 77th Cong., 1st Sess. The earlier Act was, however, completely recast, enlarged, and made more detailed. Of particular significance is the fact that Congress dispensed with the prior requirements of an application and admission thereunder, and omitted any attempt to obtain the consent of the individual veteran. Thus, while the original statute required some formalities, the statute as modified was self-executing and required no agreement and none of the other usual incidents of a contract. This history confirms the clear intent of Congress, as expressed in its language, that the statute should apply to both competent and incompetent veterans who die while receiving care or treatment at a V.A. installation.*

* The legislative history of the Act of Dec. 26, 1941, is meagre. Neither of the Committee reports casts any light upon the problem involved here. H. Rept. No. 609 and Sen. Rept. No. 900, 77th Cong., 1st Sess. No record of a hearing in either House has been found. The bill was drafted by the Veterans Administration and was approved and passed without modification. 87 Cong. Rec. 5850–5851, 9771. In a brief colloquy on the floor of the House, however, Congressman Rankin, the Chairman of the Committee on World War Veterans' Legislation, expressed an opinion that the proposed legislation required the agreement of the veteran to its terms and therefore did not apply to veterans who were insane or physically unable to agree. 87 Cong. Rec. 5203. No action was taken

While we have not been able to ascertain the administrative practice under the 1910 Act prior to its amendment in 1941, we have been advised by the Veterans Administration that since 1941 the statute has been administratively interpreted as applying to competent and incompetent veterans alike. See Appendix, *infra*, p. 44. This interpretation is, of course, entitled to great weight.

4. The Oregon Supreme Court's construction of 38 U.S.C. 17–17j was influenced by the court's belief (App., *infra*, pp. 29–35) that the application of the statute to an incompetent veteran would violate the Fifth and Tenth Amendments. We submit that this belief is without foundation and that no constitutional problem arises from the enforcement of the statute in accordance with its plain terms.

a. 38 U.S.C. 17–17j does not interfere with the veteran's rights under the Fifth Amendment. The operative provisions of the statute do not come into play unless and until the veteran dies without having made a testamentary disposition of his property and without leaving relatives entitled to inherit under the state law of intestate succession. If that situation occurs, the veteran's property rights have expired and the sole alternative to the vesting of his personalty in the United States is an escheat to the state.

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by the House following this discussion (87 Cong. Rec. 5203–5204), and there is no indication anywhere in the legislative history that any other Member of Congress subscribed to this view. In light of the fact that the bill was drafted in the Veterans Administration, and of the terms of Sections 17–17j, we do not think that this isolated opinion of Congressman Rankin can be regarded as reflecting the intention of Congress.

We do not understand the Oregon court to suggest that a state's right of escheat is within the ambit of the Fifth Amendment, and we submit that it is not. At best, it is doubtful that a state can be regarded as a "person" within the meaning of the Fifth Amendment. Cf. *United States* v. *Burnison*, 339 U.S. 87, 95. In any event, since an individual's right of succession to property is not protected by any provision in the Constitution (*Irving Trust Co.* v. *Day*, 314 U.S. 556, 562), it would seem to follow perforce that a state's right of escheat is not guaranteed by the Fifth Amendment.

b. Nor would the application of the statute in this case effect an escheat to the United States and thus invade "matters concerning the devolution of property [which] are reserved by the Tenth Amendment to the several states" (App., *infra*, p. 35). As expressly held by the Supreme Court of North Dakota, in a case involving an incompetent veteran, the vesting provisions of 38 U.S.C. 17 do not present a question of escheat. Rather, the rights of the United States arise "by virtue of the relations created under the terms of the statute." *In re Gonsky's Estate, supra*, 79 N.D. at 131.

Since its inception, the Tenth Amendment has been uniformly construed as not limiting the powers, express or implied, which have been delegated to the national government. *Martin* v. *Hunter's Lessee*, 1 Wheat. 304, 324–325; *McCullough* v. *Maryland*, 4 Wheat. 316, 405–406; *United States* v. *Darby*, 312 U.S. 100, 124, and cases cited; *Fernandez* v. *Wiener*, 326 U.S. 340, 362; *Case* v. *Bowles*, 327 U.S. 92, 101–102;

Oklahoma v. *Civil Service Comm.*, 330 U.S. 127, 142–144. And the Federal Government may resort to "all means for the exercise of a granted power which are appropriate and plainly adapted to the permitted end" without violation of the Tenth Amendment. *United States* v. *Darby, supra.*

The delegated power to provide for the common defense and to raise and maintain an army and navy (Art. I, Section 8) confers authority upon Congress to provide pensions and other benefits, as a reward to those who have rendered faithful service in the armed forces of the United States and as an inducement for future service by others. See *Abbott* v. *Morgenthau,* 93 F. 2d 242 (C.A.D.C.), certiorari denied, 303 U.S. 638. In granting pensions and gratuities Congress may, of course, impose such terms and conditions as it sees fit so long as they are reasonably related to these overall objectives. See *Abbott* v. *Morgenthau, supra; Coakley* v. *Attorney General,* 318 Mass. 508, 62 N.E. 2d 659. Indeed, insofar as pensions are concerned, this was conceded by the court below (App., *infra,* pp. 35–37).

38 U.S.C. 17–17j does no more than attach a condition to the gratuitous treatment and care of veterans in V.A. facilities. And since the property vested under the statute is used solely for the benefit of other patients in such facilities, the condition is "plainly adapted" to the legitimate objective of Congress to care for the nation's veterans.

This case well illustrates the existence of a relationship between the hospitalized veteran and the United States which goes beyond that between the ordinary

citizen and his state of domicile (upon which escheat is predicated). The veteran here was provided with, in addition to a pension, gratuitous care for a non-service-connected disability for a total of more than ten years.

In this regard, it cannot be disputed that Congress could constitutionally provide, with respect to competent and incompetent veterans, that the value of care and treatment by the Veterans Administration should be chargeable against the veterans' estate in all circumstances. In the case of many veterans (including the veteran in this case), such a provision would reduce or eliminate the possibility of inheritance by surviving relatives or of an escheat. 38 U.S.C. 17–17j manifests a Congressional intent that the veteran's survivors not be taxed with the cost of his hospitalization and that, where there are neither heirs nor a testamentary disposition, other hospitalized veterans (rather than the public treasury) obtain the benefit of the veteran's estate. Surely, Congress' authority is not lessened because it chose to be more generous to veterans and their families than it might have been. Cf. *Ferry* v. *Ramsey*, 277 U.S. 88.

5. The questions involved here are of recurring importance. We have been advised by the Veterans Administration that, as of April 30, 1960, it had a total of 105,404 incompetent veterans on its rolls. Approximately 52,300 of these veterans were under treatment in V.A. neurological-psychiatric hospitals, and several thousands were under treatment in other types of V.A. hospitals and institutions. Although

there are no available statistics, it is believed that a very high percentage of the mentally ill patients were incompetent at the time of their admission to the V.A. facility. Thousands of incompetent veterans die every year at V.A. installations and hospitals,[10] many of them intestate and without heirs.[11]

If the decision below is permitted to stand, it can be anticipated that there will be a substantial increase in litigation with respect to the estates of incompetent veterans who die intestate and without heirs in V.A. institutions. While, up to this time, most states appear to have accepted the uniform judicial and administrative construction of 38 U.S.C. 17–17j, it is likely that they will now endeavor to obtain an interpretation from their state courts in accord with the contrary view of the Oregon court below.

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[10] The Annual Report of the Administrator of Veterans Affairs to Congress shows that in 1959 there were 2,818 deaths in neuropsychiatric hospitals alone (Table 7, p. 161). In 1958, the figure was 2,750 (Table 3, p. 150) and in 1957, 2,520 (Table 3, p. 154).

[11] The Veterans Administration's estimate is that the General Post Fund receives approximately $200,000 annually from the estates of deceased veterans. No reliable estimate can now be made as to the amount received from the estates of incompetent veterans.

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition for a writ of certiorari should be granted.

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AUGUST 1960.

APPENDIX

1. Opinion of the Supreme Court of Oregon

Warner, J.

This is an appeal by the United States from a decree of the circuit court for Multnomah county, department of probate, escheating to the state of Oregon for the benefit of the common school fund that portion of the estate of Adam B. Warpouske received by him from the estate of his deceased brother. The United States claims said fund pursuant to a federal act hereinafter referred to, in its capacity as trustee, for the sole use and benefit of the General Post Fund, a trust created by that act.

The federal government's position here is predicated solely upon the provisions of 38 USCA §§ 17–17j, hereinafter referred to as the "Act of 1941." The pertinent sections read:

> "§ 17. Vesting of undisposed personalty in United States as trustee for General Post Fund
>
> "Effective ninety days after December 26, 1941, whenever any veteran (admitted as a veteran) shall die while a member or patient in any facility, or any hospital while being furnished care or treatment therein by the Veterans' Administration, and shall not leave surviving him any spouse, next of kin, or heirs entitled, under the laws of his domicile, to his personal property as to which he dies intestate, all such property, including money and choses in action, owned by said decedent at the time of death and not disposed of by will or other-

wise, shall immediately vest in and become the property of the United States as trustee for the sole use and benefit of the General Post Fund, a trust fund prescribed by section 725s (b)(45) of Title 31.

"The foregoing provisions are conditions precedent to the initial, and also to the further furnishing of care or treatment by the Veterans' Administration in a facility or hospital. The acceptance of care or treatment by any veteran admitted as such to any Veterans' Administration facility or hospital after ninety days from December 26, 1941, and as well the continued acceptance of care or treatment furnished by the Veterans' Administration after said ninety days by any veteran who is then receiving the same shall constitute an acceptance of the provisions and conditions of this subchapter and have the effect of an assignment, effective at his death, of such assets in accordance with and subject to the terms and provisions of this subchapter and the regulations issued in accordance with and pursuant thereto. * * *

"§ 17a. Presumption from death in facility of contract for disposition of property

"The fact of death of the veteran (admitted as such) in a facility or hospital, while being furnished care or treatment therein by the Veterans' Administration, leaving no spouse, next of kin, or heirs, shall give rise to a conclusive presumption of a valid contract for the disposition in accordance with this subchapter, but subject to its conditions, of all property described in section 17 of this title owned by said decedent at death and as to which he dies intestate. * * *

* * * * *

"§ 17g. Notice to veterans of law

"The Administrator of Veterans' Affairs shall prescribe a form of application for hos-

pital treatment and domiciliary care which shall include notice of the provisions of this subchapter. Within ninety days after approval hereof similar notice shall be given to each veteran then receiving care in any facility or hospital as described in this subchapter: *Provided, however*, That this requirement shall be met by posting of said notice with a copy of the prescribed form in a prominent place in each building wherein patients or members are housed. * * *"

The foregoing act was preceded by the Act of June 25, 1910, c. 384, which was amended by Act of December 26, 1941, c. 634, thus giving it its present form. In discussing certain decisions which follow, we will refer to the earlier version as the Act of 1910.

The facts are not in dispute. On December 31, 1955, Warpouske, a veteran of World War I, was admitted to Good Samaritan Hospital, in Portland, Oregon, for treatment of a hip fracture and cerebral hemorrhage. Five days later, he was moved to the Multnomah County Hospital for treatment at the expense of the county. There he remained until March 1, 1956, when he was transferred to the U.S. Veterans Hospital, Marquam Hill, Portland, Oregon.

While in the county hospital, his mental condition varied from comatose to semi-comatose and he was at all times lethargic and mentally confused. The testimony of one of the doctors of the county hospital was to the effect that Warpouske probably did not know where he was and in all probability did not even know he had been transferred. Indeed, the United States concedes that on March 1, 1956, by reason of his serious mental condition, he could not handle his own affairs. It also produced records of the Veterans' Administration showing, as early as 1924, a long history of mental deficiency predating his

last illness beginning in December, 1955. A diagnosis made by that facility in 1933 revealed a condition of dementia praecox as early as 1924, and concluded he was insane as of that date and probably before.

His treatment at the Veterans Hospital from the date of his entry, March 1, 1956, to the date of his death, March 19, 1956, reflects no change in his physical or mental condition. There is no evidence of or suggestion by the United States that the decedant during that period was even momentarily mentally competent to negotiate a contract or make a testamentary disposition of his property.

Dying as he did intestate and without known heirs, his estate will escheat to the state of Oregon unless it appears that the federal government has a superior right thereto under the sections of the Congressional Act of 1941, supra.

There is no record indicating who made the decision for the transfer. Certainly, the veteran had no capacity to do so nor did he then have a guardian or relative to act in his behalf. His presence in the Veterans Hospital can only be said to have been an involuntary admission, even though there was no question as to his right to be there by reason of his disabilities and war service status.

On March 9, 1956, the Portland Trust Bank was appointed guardian of Warpouske's estate for the purpose of receiving an inheritance from the estate of a brother who predeceased him in Wisconsin. This was in the net amount of $12,727.67. In addition thereto, he had when he died an item of personal property of the value of $28 and unexpended veterans pension benefits in the amount of $1,134.25. No contest exists between the parties as to the government's right to receive the last amount as rightly accruing to it under 38 USCA § 450(3) of the Act of 1930.

Out of the foregoing statement we cull these significant admitted facts which bear heavily in the formulation of our final judgment: Warpouske, long before determined insane, was totally mentally incompetent when he was involuntarily delivered to the Veterans Hospital on March 1, 1956; and that then and thereafter until the date of his death he was incompetent to contract or to make a will, and neither knew where he was or that he had been the recipient of a substantial inheritance.

Contrary to the argument advanced by the government, we are of the opinion that when we take the Act of 1941 by its four corners it sounds in contract. It is designed to effect a contractual relationship between the veteran patient and the United States. This is emphasized by words and phrases appearing in its several sections. Thus, we find "The *acceptance* of care or treatment * * * shall constitute an *acceptance* of the provisions and conditions of this subchapter and have the effect of an *assignment*" (Sec. 17 of Act); "The fact of death * * * shall give rise to a conclusive presumption of a valid *contract.*" (Sec. 17a of Act) We note, too, that Sec. 17g directs "a form of application for hospital treatment and domiciliary care which shall include a *notice* of the provisions of this subchapter." (Emphasis supplied.)

Appellant's principal assertion of error is: that the court erred "because [it held that] he [the decedent] had not entered into *a valid contract* with the United States providing for such disposition [of his estate] upon his death." (Emphasis supplied.)

The contractual character of the Act of 1941 has been consistently recognized and applied by the federal courts, as demonstrated by the following cases: *U.S.* v. *Gallagher,* 97 F Sup 1014, 1015 (SD Cal

1951); *U.S.* v. *Brown,* 110 F Sup 370, 372 (SD Cal 1952); *U.S.* v. *Peoples Nat. Bank of Chicago,* 121 F Sup 331, 332 (ND Ill 1953); *U.S.* v. *The Mid City Nat. Bank of Chicago,* 121 F Sup 402, 403 (ND Ill 1953); *U.S.* v. *Security-First Nat. Bank of Los Angeles,* 130 F Sup 521, 522 (SD Cal 1955); *U.S.* v. *Stevens,* 302 US 623, 82 L ed 484, 58 S Ct 388 (1938). It was also so construed in the following state cases: *In re Witte's Estate,* 174 Kan 360, 255 P2d 1039, 1042 (1953); *In re Turner's Estate,* 171 Cal Ap2d 682, 341 P2d 376, 379 (1959). All of the cases cited in this paragraph, except *U.S.* v. *Stevens,* construed the Act of 1941 as it is presently relied upon by the government.

It would appear from the Act of 1941, as well as by judicial declarations made in construing it, that the Congress acted with its usual respect for the Constitution and deliberately adopted the contractual concept in order to avoid trespassing upon an area reserved to the states by the Tenth Amendment; that is, the right to legislate concerning the devolution of property of intestates, including the right to declare escheats.

This conclusion is given recognition in *U.S.* v. *Stevens, supra* (82 L ed at 488), and in *U.S.* v. *Security-First Nat. Bank of Los Angeles, supra* (130 F Sup at 523).

The Act of 1941, being, as it is, a species of statutory contract, is governed by the ordinary rules relating to actions on contract. *Foley* v. *Leisy Brewing Co.,* 116 Iowa 176, 89 NW 230, 231.

It is a principle universally recognized that only the mentally competent can enter into a binding contractual engagement and so, too, the further rule that silence and inaction do not amount to an acceptance of an offer. *Dexter* v. *Hall,* 82 US 20, 21 L ed 73,

77; *Beach* v. *U.S.*, 226 US 243, 57 L ed 205, 33 S Ct 20. These declarations of the law form a part of our own jurisprudence. See *Farley* v. *Parker* (1876), 6 Or 105, 111; *Bowman* v. *Wade* (1909), 54 Or 347, 357, 103 P 72; and *Graham* v. *Allen* (1925), 116 Or 501, 505, 241 P 1007, wherein it was held that an instrument signed by one non compos mentis at the time of its execution is *void*. See, also, *German Savings & Loan Soc.* v. *DeLashmutt*, 67 F 399 (CC D Or 1895), following *Dexter* v. *Hall, supra; Edwards* v. *Davenport*, 20 F 756 (CC SD Iowa 1883), and *Farley* v. *Parker, supra*. Infants and the mentally incompetent both command the protection of courts of law, as well as courts of equity. *Dexter* v. *Hall, supra* (21 L ed at 77).

In coming to his conclusion in *U.S.* v. *Stevens, supra*, that a valid contractual relationship subsisted between the veteran and the government, we find what we deem a significant statement in the light of the facts prevailing in this matter. There, Mr. Justice Black observed: "Nothing in the record indicates that the agreement was not fairly and voluntarily entered into between the parties, or that it was inequitable, unjust or not upon valuable consideration. *Both parties were competent to make the contract.*" (302 US at 628; 82 L ed at 488.) (Emphasis supplied.)

Crowded to avoid the law's solicitude for the incompetent in the area of contract, appellant attempts to sidestep it by recourse to that part of Sec 17a of the Act of 1941, reading: "The fact of death of the veteran (admitted as such) in a facility or hospital, * * * leaving no spouse, next of kin, or heirs, shall give rise to *a conclusive presumption of a valid contract.*" (Emphasis supplied.) In support of this position, appellant advances the argument: "This provision is wholly inconsistent with the view of the

court below that Congress intended to require an actual contract between the veteran and the federal government." If by "actual" appellant means only express contracts and not contracts so forcibly implied by the statutory conclusion, then it flies in the face of the consistent line of federal holdings, as pointed out above, that both the Act of 1910 and its successor, the Act of 1941, are premised upon a theory of contractual relationship.

Assuming without deciding that between the government and veterans who are sui juris the Congress can create a valid contractual relationship by the employment of the conclusive presumption, we are still confronted with the question as to whether such a presumption can be effectively and constitutionally applied against a concededly incompetent veteran. In short, can a legislative body defy common experience and by resort to fiat convert the irrational into the rational, transform the unnatural into the natural? Has Congress the power by the adoption of the device of an absolute presumption to create a "valid" engagement out of one made by an incompetent person, which without doubt would otherwise be declared to be a nullity by the courts?

Presumptions, whether conclusive or disputable, are generally defined as inferences *required* by a rule of law to be drawn as to the existence of one fact from the existence of some other established basic fact. They may be created by statute if there is some justification of public policy, or a rational connection between the fact proved and the fact presumed. But statutes declaring certain facts to be even prima facie or rebuttable evidence of other facts can violate constitutional guaranties of due process where there is no rational connection between the facts proved and the ultimate fact presumed. *Tot* v. *U.S.*, 319 US 463, 87

L ed 1519, 63 S Ct 1241 (1943); *McFarland* v. *American Sugar Ref. Co.*, 241 US 79, 60 L ed 899, 36 S Ct 498; *Manley* v. *Georgia*, 279 US 1, 6, 73 L ed 575, 578, 49 S Ct. 215; *Morrison* v. *California*, 291 US 82, 91, 78 L ed 64, 54 S Ct. 281; *Great Atlantic & Pacific Tea Co.* v. *Ervin*, 23 F Sup 70, 80 (DC Minn 1938); *U.S.* v. *Jones*, 176 F 2d 278 (9th Cir 1949); 1 Jones, Evidence (5th ed), 23–24, § 12; IV Wigmore, Evidence, 715, § 1353; Anno 162 ALR 495; 16A CJS 817, Constitutional Law § 621, n 74; 20 Am Jur 39–41, Evidence §§ 9, 10; 10 Tex Law Rev 34 (1931–32); *City of Seattle* v. *Ross*, — Wash —, 344 P 2d 216, 219 (1959).

Mr. Justice Holmes in *McFarland* v. *American Sugar Ref. Co., supra*, observes:

> "As to the presumptions, of course the legislature may go a good way in raising one or in changing the burden of proof, but there are limits. It is 'essential that there shall be some rational connection between the fact proved and the ultimate fact presumed, and that the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate.' * * *." (241 US at 86)

Perhaps the clearest and best enunciated statement of the test of rational connection is found in that made by Mr. Justice Roberts in *Tot* v. *U.S.*, *supra* (87 L ed at 1524):

> "* * * Under our decisions, a statutory presumption cannot be sustained if there be no rational connection between the fact proved and the ultimate fact presumed, if the inference of the one from proof of the other is arbitrary because of lack of connection between the two in common experience. This is not to say that a valid presumption may not be created upon a view of relation broader than that a jury might take in a specific case. But where

> the inference is so strained as not to have a reasonable relation to the circumstances of life as we know them it is not competent for the legislature to create it as a rule governing the procedure of courts."

Although this court has never been faced with a problem of the character now presented, our adherence to these principles has implicit support, as reflected by *Wyckoff* v. *Mutual Life Ins. Co.*, 173 Or 592, 608, 147 P2d 227, where we cited with approval and with the emphasis there indicated the following statement from 20 Am Jur 40, Evidence § 9:

> "* * * Statutes declaring certain facts to be prima facie or presumptive evidence of other facts do not, *where there is some rational connection between the facts proved and the ultimate facts presumed,* deny equal protection of the laws or violate constitutional guaranties of due process of law. * * *"

See, also, our holding in *Burke* v. *Burke,* 216 Or 691, 697, 340 P2d 948, where Mr. Justice Millard, in discussing the presumption of a child's legitimacy by reason of being born in wedlock (ORS 41-360(3) and 109.070), observes: "* * * the modern trend is away from the rule of conclusiveness. 57 ALR2d 759," and cites with approval the following statement from *Anderson* v. *Anderson,* 214 Cal 414, 5 P2d 881, 882: "It [a presumption] cannot prevail as against undisputed facts to the contrary and at variance with the laws of nature." Although discussing the Burke case presumption of legitimacy, we are of the opinion that the statements quoted are equally forceful when the making of "valid contract" is conclusively presumed to have been accomplished by one non compos mentis while a thrall to his mental disability.

What is true of rebuttable presumptions has even more cogency with respect to conclusive presumptions which operate to deprive individuals of their rights or infringe upon constitutionally protected areas. *Heiner* v. *Donnan,* 285 US 312, 76 L ed 772, 52 S Ct 358 (1932); *Schlesinger* v. *Wisconsin,* 270 US 230, 70 L ed 557, 46 S Ct 260, 43 ALR 1224; *City of New Port Richey* v. *Fidelity & Deposit Co. of Maryland,* 105 F2d 348 (5th Cir 1939), 123 ALR 1352, *Comm'r of Internal Revenue* v. *Clark,* 202 F2d 94 (7th Cir 1953). See, also, 12 Am Jur 317–18, Constitutional Law § 625.

In *Heiner* v. *Donnan, supra,* the court dealt with a provision of the Internal Revenue Code which made transfer of a gift two years prior to death conclusively presumed to be made in contemplation of death. It was held that the presumption violated the prohibition of the Fifth Amendment against the taking of property without due process of law and the presumption was characterized by Mr. Justice Sutherland as follows:

> "* * * whether the * * * presumption be treated as a rule of evidence or of substantive law, it constitutes an attempt, by legislative fiat, to enact into existence a fact which here does not, and cannot be made to, exist in actuality, * * *." (76 L ed at 780)

All parties concede the extreme degree of the mental incompetency of the deceased veteran, yet, the government's only claim to his property (in this instance, *not unexpended funds received from United States pensions,* but an inheritance received from his brother) rests solely upon a conclusive presumption that his presence in the hospital at death resulted in a "valid contract for the disposition * * * of all property * * * owned by [the] decedent" at the time of his death.

We find in the situation presented by Warpouske's history and the employment of the presumption relied upon by appellant, a striking exemplification of an irrational and unnatural relationship between the proven fact of his death in a government hospital as an incompetent and the ultimate fact presumed. It is one having all the elements which have prompted courts to deplore such a mandate as an arbitrary and unreal artifice, contravening the Due Process Clauses of the Fifth and Fourteenth Amendments. In this matter, when applied to Warpouske and other unfortunates of the same category, it is, as said by Mr. Justice Sutherland in *Heiner* v. *Donnan, supra,* "an attempt, by legislative fiat, to enact into existence a fact which here does not, and cannot be made to, exist in actuality."

The presumption here excludes consideration of all the circumstances which brought Warpouske to the hospital and made him an involuntary patient there from the time of his entry until the day of his death. We are now asked to presume, however, that a man totally non compos mentis voluntarily accepted the benefits the hospital bestowed (and to which he was entitled under the law, without charge) and who, because of his failure to make a testamentary disposition of his estate while in the hospital, and to further presume that by his enforced silence he waived his right so to do in favor of the government. The death of the veteran in the hospital, although helpless and there without his direction or knowledge is thus made the sole factor which activates the absolute presumption that he made "a valid contract for the disposition" of his property to the United States (Secs. 17, 17a) and which, if applied, forecloses any opportunity to present evidence that the veteran was wanting in mental capacity either then

or for years before, to make any kind of a valid contract or will.

That the creation of this contract with Warpouske might well be a proper subject for judicial inquiry despite the conclusive presumption written into the Act of 1941 is strongly indicated by Judge Tolin in *U.S.* v. *Security-First Nat. Bank of Los Angeles, supra* (130 F Sup 521), by his observation at page 522, reading:

> "No party has challenged the validity of this agreement on the ground that there was no agreement as to the footnoted matter, and although a footnote to an application for admission to a hospital is not an exemplary way to establish privity of contract, in the absence of challenge, it is sufficient. Considering that applicants for domiciliary care in a hospital are usually sick and often lacking acute mental perception, the force of a footnote to the entry application (the footnote purporting to create a special contract of unusual character) might be considerably diminished, and frequently destroyed by a careful inquiry into the circumstances of the execution of the application for domiciliary care. * * * That contracts of this character may be valid if properly entered into, is firmly established by Supreme Court adjudication."

We do not think the Congress ever intended to apply the presumption found in the Act of 1941 to a situation akin to what we find here, for to thus appropriate the property of the estate of an utterly helpless veteran by the arbitrary device of "conclusive presumption" is basically contrary to the traditional solicitude of the government for its disabled war veterans.

There is an even more cogent reason for assuming that the position taken by appellant's counsel is not

consonant with Congressional intent. To conclude this matter in favor of the government by approving its claim to Warpouske's inherited money solely because of the conclusive presumption it invokes, would, in fact, transform the status of the government claim in the instant matter to one closely approaching the exercise of an arbitrary right of escheat, rather than upon a claim of right derived from contract.

We have no doubt that one of the motivations for the legislative design upon which the Act of 1941 is predicated, in terms of contract, was the Congressional consciousness of its want of constitutional power to exercise a right of escheat in an estate, knowing full well that all matters concerning the devolution of property are reserved by the Tenth Amendment to the several states. *Mager* v. *Grima*, 49 US 490, 493, 12 L ed 1168, *Pennoyer* v. *Neff*, 95 US 714, 722, 24 L ed 565; *U.S.* v. *Fox*, 94 US 315, 320, 24 L ed 192; *U.S.* v. *Perkins*, 163 US 625, 628, 41 L ed 287, 16 S Ct 1073. See, also, *U.S.* v. *Security-First Nat. Bank of Los Angeles, supra* (130 F Sup at 523).

Notwithstanding the multiple holdings of the federal courts that the Act of 1941 envisions a contractual relationship, counsel for appellant would have us believe the contrary and to do so places reliance upon the decisions of state courts.

But before we give critical attention to the several cases which appellant's counsel urges upon us, it is important that we take notice of the two separate and distinct acts under which the government can lay claim to the estates of veterans dying intestate in a government facility without heirs surviving them.

The first, in the order of their enactment, was § 450(3), 38 USCA. This subsection was added to § 450, supra, by Act of July 3, 1930, and we will refer to it as the Act of 1930. The other is the Act of

1941, under which the federal government lays its claim against the estate of Warpouska.

Both Acts rely upon two different theories of right as a basis for the governmental claim of ownership and each reaches an entirely different species of property in the veteran's estate. Moreover, the property recovered under the Act of 1930 goes into an entirely different fund than that obtained under the Act of 1941.

The Act of 1930 implements a recoupment of any unused or accrued funds derived from federal pensions or other forms of veteran gratuity, whereas, the Act of 1941 is designed to place in the government's reach any other personal property of the veteran no matter from whence derived. Hence, we have here the relinquishment to the government without contest the sum of $1,134.25, earlier referred to as being funds representing unexpended pension benefits. This was correctly done pursuant to the Act of 1930. But as to the balance of decedent's estate, represented solely by the inheritance received from his brother, appellant claims ownership, not under the Act of 1930, but under the Act of 1941, on the theory of a conclusive contract.

No element of contract is present or required under the earlier Act of 1930, as is evident from a reading of the pertinent part of Sec. 450(3):

> "* * * That any funds in the hands of a guardian, curator, conservator, or person legally vested with the care of the beneficiary or his estate, derived from compensation, automatic or term insurance, emergency officers' retirement pay, or pension, payable under said Acts, which under the law of the State wherein the beneficiary had his last legal residence would escheat to the State, shall escheat to the United States and shall be returned by such guardian, * * * to the Veterans' Administration, and

shall be deposited to the credit of the current appropriations provided for payment of compensation, insurance or pension."

The obvious intent, purpose and meaning of the foregoing section of the Act of 1930 is that the federal government has not made the gift of a pension or other gratuity absolute and complete, but has retained in itself at all times a contingent reversionary interest, which under the circumstances stipulated in Sec. 450(3), would vest the residue of the gift in the government to the exclusion of any claim of escheat by the state. *In re Lindquist's Estate,* 25 Cal2d 697, 154 P2d 879 (1944). No claim of contract is involved. The right to the continuing interest of the government to the unused portions of such gratuities attaches from the date of the initial disbursement of its bounty. See *Abbott* v. *Morgenthau,* 68 App DC 83, 93 F2d 242.

Unfortunately, all courts have not observed this clear and important distinction between what the government can properly claim under the Act of 1941 and can properly obtain under the Act of 1930, nor have they noted the difference in the basic theories around which each of said Acts is separately built. This is found to be particularly true when one examines the decisions of the state courts, and is exemplified by the cases cited to us by appellant. To the extent that they do not adjudicate claims made to property under the Act of 1941, but are rather addressed to the recovery of the kind of property specified in the Act of 1930, they may be laid aside.

With these matters in mind, we now turn to a consideration of the cases which appellant has marshaled.

In re Gonsky's Estate, 79 ND 123, 55 NW2d 60 (1952), the estate "consisted of United States savings bonds and cash all derived from payments to him [Gonsky] during his lifetime by the United States

as retirement for disability as a regular army person" (55 NW2d, supra, at 61).

In re Skriziszouski's Estate, 382 Pa 634, 116 A2d 841 (1955), again, we find that the decedent's estate amounting to $21,905, "was composed of money received from the Federal Government through the Veterans' Administration, plus interest earned thereon," except for $50 received as a bonus from the Commonwealth of Pennsylvania (116 A2d, supra, at 842).

The same situation as to the character of the estate left by decedent prevailed *In re Campbell's Estate,* 195 Misc 520, 89 NYS2d 310 (1949), where the surrogate court observes, at p 311: "His [Campbell's] estate consists of assets derived solely from pensions paid to the decedent through his committees by the United States Government." So, too, in the *Matter of the Estate of Alexander Zakowski* (1950) (an unreported opinion of the Circuit Court for Wayne County, Michigan, copy of which is incorporated in appellant's brief by the appendix).

Thus, in every state case to which we make reference in the preceding paragraphs, the government's reversionary right to recovery of unused bounties is made clear by the provisions of the Act of 1930 and is the explanation for those decisions. Here, however, the government reaches not for the residue of pension funds, but for property which came to Warpouska by inheritance. Obviously, the foregoing cases do not speak to the contractual aspect of a claim arising under the Act of 1941, nor, for the same reason, do they discuss or refer to the conclusive presumption clause of the Act of 1941 upon which appellant rests its case. The only element common to the last-mentioned cases and the one at bar is that the decedents were mentally incompetent, a factor which in no way militates against the government's

reserved right to effect a recovery under the Act of 1930.

Appellant also points to *In Re Bonner's Estate,* 192 Misc 753, 80 NYS 2d 122 (1948), a decision of the surrogate court of New York, but never appealed. We have reserved comment on that case because it more nearly proximates the factual situation disclosed by the record in the case at bar. The decedent, Bonner, was an adjudicated incompetent and an inmate of veterans hospitals continuously from 1922 until his death in 1944. He left assets consisting of Adjusted Service Bonds of the value of $1,550 and other assets worth $3,350.21 from an undisclosed source and in the opinion referred to as the "distributable balance," and, therefore, in the property aspect similar to Warpouske's estate. The court rests its conclusion favorable to the government upon both the Act of 1930 and the Act of 1941.

A too casual reading of the decision might warrant a conclusion that it supports the government's position in this appeal. But critical analysis nullifies its value here. As to the service bonds, a form of governmental gratuity, the court ruled correctly.

Concerning the rest of the estate, i.e., the "distributable balance," which came to Bonner from other than governmental sources, the court makes this arresting and palpably incorrect statement at p 126:

> "* * * Apart from the Adjusted Service Bonds which were paid to decedent as additional compensation for his service in World War I, it is not claimed that the distributable balance herein consists of the residue of governmental gifts. *This fact, however, is not controlling.* * * *"(Emphasis supplied.)

citing as its sole authority *Matter of McGhee,* 149 Misc 713, 268 NYS 79 (1932), aff'd 239 App Div 763, 264 NYS 903, aff'd 262 NY 686, 188 NE 121.

But McGhee fails to support such a sweeping conclusion. A reading of McGhee discloses two interesting and distinguishing differences from the Bonner case and the present appeal. McGhee, a veteran of the Civil War, was a resident of the National Military Home at Bath, New York. When he entered that facility in 1929, he executed a written application which was, in fact, a contract leaving to the government the proceeds of his estate not disposed of by will and embodying the terms of what was then Sec. 136 of 24 USCA. That Act was the predecessor to the present Act of 1941. The claim of the government, rightly adjudicated in its favor, rested solely on a written agreement as then required by the Act as a condition to his entry. McGhee died intestate and without heirs. No issue was raised concerning his mental capacity to make such a contract, nor does the decision suggest that he was at any time incompetent.

We find nothing in the cases cited to us by appellant which is decisive here and for the reasons previously stated, hold that the Act of 1941 is inoperative when applied to the estate of Adam B. Warpouske.

Affirmed.

2. JUDGMENT OF THE SUPREME COURT OF OREGON

[Formal parts omitted.]

Whereupon on this Wednesday, the 18th day of May, 1960,

* * * * *

This cause on April 13, 1960, having been duly argued and submitted upon and concerning all questions arising upon the transcript and record and then reserved for further consideration, and the Court having fully considered all said questions as well as suggestions of

counsel in their argument and briefs finds there is not error as alleged.

It therefore is CONSIDERED, ORDERED and DECREED that the decree of the court below rendered and entered in this cause be and the same is in all things affirmed.

The appellant having given an undertaking on appeal with United States Fidelity and Guaranty Company conditioned that appellant will pay all damages, costs and disbursements which may be awarded against it on appeal.

It therefore is Ordered that respondent State of Oregon have and recover of and from appellant and its surety its costs and disbursements in this court taxed at $30.

It further is Ordered that this cause be remanded to the court below from which the appeal was taken with directions to enter decree in accordance herewith.

3. Opinion of the Circuit Court of Multnomah County, Department of Probate

[Formal parts omitted.]

That the deceased Adam B. Warpousko was mentally ill for many years prior to December 26, 1941, and continued to be mentally ill from said date until his death;

That he was not mentally competent to understand the consequences of his acceptance of hospitalization in the Veterans Administration Facilities or to enter into any contract respecting such hospitalization or the consequences thereof, and in particular he was not mentally competent to enter into any agreement, either by word or deed, whereby his undisposed personalty would vest in the United States as Trustee for the General Post Fund;

That unless the deceased, either by word or deed, entered into a valid contract, the provisions of Section 17, Title 38, United States Code, cannot and do not control the disposition or vesting of his personalty at the time of his death;

That the administrative expenses in the Guardianship Estate of Adam B. Warpouske (Multnomah County Clerk's No. 76000) should be borne proportionately by the assets derived from United States Government pension funds and the assets derived from the decedent's brother in Wisconsin;

And that that part of the decedent's estate which represents the balance of funds derived from Veterans Compensation escheats to the Federal Government by virtue of Section 450, Title 38, U.S.C., and that the remainder of the estate escheats to the State of Oregon for the benefit of the Common School Fund.

4. Findings of Fact and Conclusions of Law, Circuit Court of Multnomah County

FINDINGS

1. The decedent, Adam B. Warpouske, was mentally ill for many years prior to December 26, 1941, and continued to be mentally ill from said date until his death.

2. On a number of occasions prior to March 1, 1956, the decedent, Adam B. Warpouske, was hospitalized in various hospitals operated in various places in the United States of America by the United States Veterans' Administration.

3. The said Adam B. Warpouske was not mentally competent to understand the consequences of his acceptance of hospitalization in hospitals operated and conducted by the United States Veterans' Administration, nor was he competent to enter into any

contract respecting any such hospitalization; and in particular, he was not mentally competent to enter into any agreement, either by word or deed, whereby his undisposed personalty would vest in the United States of America as trustee for the General Post Fund.

CONCLUSIONS

1. Unless the deceased, either by word or by deed, entered into a valid contract upon entry into a hospital conducted by the United States Veterans' Administration, the provisions of § 17, Title 38, United States Code, cannot and do not control the disposition or vesting of his personalty at the time of his death.

2. That part of the decedent's estate which represents the balance of funds derived from United States Veterans' compensation should be charged with its proportionate share of the administration expenses in the guardianship estate of Adam B. Warpouske, incompetent, Multnomah County Clerk's Filing No. 76000; and after such charge of proportionate expenses, the remainder of that part of the decedent's estate, which represents the balance of funds derived from compensation paid by the United States Veterans' Administration, shall be distributed to the United States of America under the provisions of § 450, Title 38, United States Code.

3. The remainder of the estate of the decedent escheats to the State of Oregon for the benefit of the Common School Fund and so is distributable to the State Land Board of the State of Oregon.

4. A table delineating the amounts in dollars to be distributed to the United States of America and to the State Land Board of the State of Oregon, under the foregoing conclusions of law, is annexed hereto as Exhibit "A" and is by reference made a part hereof; and the result of such table is that out of the

sum of $13,727.14, now on hand as the assets of this estate, the sum of $971.47 shall be distributed to the United States of America, with the remaining sum of $12,755.67, distributable to the State Land Board of the State of Oregon.

5. LETTER FROM THE VETERANS ADMINISTRATION

VETERANS ADMINISTRATION,
OFFICE OF GENERAL COUNSEL,
Washington 25, D.C., August 9, 1960.

77-85-321
023B
Warpouske, Adam B.
XC-1 628 265

Re: Estate of Adam B. Warpouske (Ore. Sup. Ct., No. 17381).

The Honorable J. LEE RANKIN,
The Solicitor General of the United States,
Washington 25, D.C.

DEAR MR. RANKIN: This is in response to your request for an expression as to the practice of the Veterans Administration under the so-called vesting statute, formerly 38 USC 17-17j (now 38 USC 5220 et seq.).

The Veterans Administration, since the enactment of P.L. 382, 77th Congress, 55 Stat 868, on December 26, 1941, amending the Act of June 25, 1910, has consistently applied the criteria set forth in 38 USC 5220 et seq. in determining the Government's entitlement to the personal property of a deceased beneficiary. Specifically, the question whether the veteran was sane or insane at the time of his admission has never been

considered pertinent in this connection. The VA Regulation implementing P.L. 382 is set forth in 38 CFR, 1956 Rev., in sections 12.19 et seq.

Very truly yours,

(Sgd) FRED B. RHODES, JR.,
General Counsel.

U.S. GOVERNMENT PRINTING OFFICE: 1959

FILE COPY

Office-Supreme Court, U.S.
FILED
OCT 17 1960
JAMES R. BROWNING, Clerk

In the Supreme Court of the United States

OCTOBER TERM 1960

No. 329

THE UNITED STATES OF AMERICA, as trustee for the sole use and benefit of the General Post Fund, Petitioner

v.

THE STATE OF OREGON, acting by and through the State Land Board, Respondent

In the Matter of the Estate of Adam B. Warpouske, Deceased; Portland Trust & Savings Bank, Administrator of the Estate of Adam B. Warpouske, Deceased

RESPONDENT'S BRIEF OPPOSING PETITION FOR A WRIT OF CERTIORARI

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Attorneys for Respondent State of Oregon, acting by and through the State Land Board
Supreme Court Building
Salem, Oregon

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In the Supreme Court of the United States

OCTOBER TERM 1960

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In the Matter of the Estate of Adam B. Warpouske, Deceased; Portland Trust & Savings Bank, Administrator of the Estate of Adam B. Warpouske, Deceased

RESPONDENT'S BRIEF OPPOSING PETITION FOR A WRIT OF CERTIORARI

QUESTIONS PRESENTED

Under the circumstances of this case, the questions presented by petitioner for writ of certiorari, in substance, appear to be:

1. Whether the provisions of 38 U.S.C. (1952 ed.) 17-17j are founded upon contract and thus do not apply to a mentally incompetent veteran, incapable of contracting, dying intestate and without heirs while being cared for in a Veterans' Administration hospital, admitted to such hospital without a guardian of his person to represent him or commitment by a court.

2. Whether Congress can constitutionally provide for

the automatic vesting in the United States of the personal property of a veteran dying intestate and without heirs upon the condition of care being furnished him by the Veterans' Administration hospital.

STATEMENT OF CASE

By this petition for writ of certiorari the United States seeks review of the decision of the Oregon Supreme Court affirming the decree of the State Circuit Court escheating to the State of Oregon for the benefit of the Common School Fund that portion of the estate of Adam Warpouske, deceased, derived from the estate of his deceased brother.

The case arises out of competing claims of the United States and the State of Oregon presented to the Probate Department of the Circuit Court for Multnomah County in the administration of Warpouske's estate. The United States claimed under 39 U.S.C. (1952 ed.) 17-17j (App. A), which provides for vesting in the United States, as trustee of the general post fund, of personal property of veterans dying intestate and without heirs while being cared for in a Veterans' Administration facility or hospital. The State of Oregon rested its claim upon Oregon Revised Statutes 120.010 (App. B) which provides for escheat to the State of Oregon for the benefit of the Common School Fund of estates of persons dying intestate and without heirs.

The facts relating to this mentally incompetent veteran are unique. Warpouske had a long history of mental illness antedating any admission of him to a Veterans'

Administration facility or hospital. In addition to this, at the time of his admission to the Veterans' Administration Hospital at Portland, he was in a comatose or semi-comatose condition and remained in such condition until his death. No guardian of his person was ever appointed to represent and act for him, nor was there any order of a court committing or directing his admission to the facility.

Warpouske was a veteran of World War I and a resident of Portland, Oregon. On December 31, 1955, he suffered a cerebral hemorrhage and hip fracture and was taken to the Good Samaritan Hospital (R. 49, p. 18). Appearing to be without funds, he was moved to the Multnomah County Hospital a few days later (R. 49, p. 18). He remained at this hospital until March 1, 1956, when he was transferred to the Veterans' Administration Hospital at Portland where he died on March 19, 1956 (R. 49, p. 18).

The cerebral hemorrhage rendered him unconscious and he remained unconscious or at best at times semi-conscious until his death. In the opinion of the physician attending him at the Multnomah County Hospital, Warpouske probably did not know where he was or whether he was being transferred to the Veterans' Hospital (Stipulation, Jmt. Roll, Paper No. 33; also Ex. 8). The Veterans' Hospital record states there was no clearing of his sensorium (Ex. 8).

Shortly before he died, it was learned that Warpouske had become the sole heir of his deceased brother whose estate netted the sum of $12,727.67 (R. 34). He never

was aware of this inheritance. On March 9, 1956, the Portland Trust Bank was appointed guardian of Warpouske's estate to receive this inheritance for him from his brother's estate in Wisconsin (R. 13, p. 16). No guardian of Adam Warpouske's person was ever appointed.

The only other assets in Warpouske's estate were unexpended federal pension funds of a net sum of $971.47 (R. 34) and small items of personal property valued at $28.

Upon the trial of the claim of the United States and the petition for escheat of the State of Oregon in the probate court, the United States produced its entire Veterans' Administration file covering Warpouske. The court directed the attorneys for the respective parties to select from the file such relevant and material portions as each might wish to introduce in evidence. The exhibits extracted disclosed a long history of mental illness and mental deficiency for Warpouske predating any admission to a veterans' facility. A report covering an examination in connection with Warpouske's admission to a veterans' hospital in May 1933 diagnosed his mental condition as dementia praecox, hebephrenic type, existing as early as 1924 and very likely prior to that date (Ex. 3). Other reports classified him as a moron as well as diagnosing his mental condition as psychotic.

The State of Oregon relinquished all claim to such portion of Warpouske's estate as consisted of unexpended federal pension funds, recognizing they were subject to recoupment by the federal government under the pro-

visions of 38 U.S.C. (1952 ed.) 450 and that their reversion to the United States was not a matter of contract but a revesting of a contingent reversionary interest reserved by the federal government in the grant of a pension to a pensioner.

The probate court found that Warpouske was not mentally competent to understand the consequences of his acceptance of hospitalization in hospitals operated by the Veterans' Administration nor competent to enter into any contract repecting any such hospitalization and, therefore, the provisions of 38 U.S.C. 17-17j, supra, did not control the disposition or vesting of his personal property. The court decreed the estate (except for the unexpended pension funds) escheated to the State of Oregon for the benefit of the Common School Fund. This decree was affirmed by the Oregon Supreme Court.

ARGUMENT

I

The Oregon Supreme Court's construction of 38 U.S.C. (1952 ed.) 17-17j as being a statute based upon contract is entirely consistent with an almost uniform line of judicial decision in both state and federal courts.

It is well established that this statute is based upon contract between the veteran and the Veterans' Administration: *In re Turner's Estate*, 1959, 171 Cal. App. 2d 591, 341 P. 2d 376; *In re Witte's Estate*, 1953, 174 Kan. 360, 255 P. 2d 1039; *United States v. Stevens*, 302 U. S. 623, 82 L. ed. 484; *United States v. Security-First National Bank of Los Angeles*, 1955, 130 F. Supp. 521; *United*

States v. Brown, 1952, 110 F. Supp. 370; *Mauck v. United States*, 94 F. 2d 745; *Abbott v. Morgenthau*, 93 F. 2d 242; *In re Gonsky's Estate*, 79 N. Dak. 123, 55 N.W. 2d 60; *In re McGhee's Estate*, 268 N.Y.S. 79; *United States v. Essex Co.*, 44 F. Supp. 476; *O'Connell v. United States*, 37 F. Supp. 832; *United States v. Gallagher*, 97 F. Supp. 1014.

Examination of the provisions of 38 U.S.C. 17-17j, supra, discloses that the statute is couched in the language of contract and is intended to be founded upon contract. Section 17 speaks of "acceptance" of care and treatment as constituting an "acceptance" of the terms and conditions of the subchapter, with the effect of an "assignment", effective at the veteran's death, of the personal assets in the veteran's estate. Section 17g directs the Administrator of Veterans' Affairs to provide for an application form for hospital treatment which shall include notice of the provisions of the statute and for posting of the notice of the statutory provisions in the buildings where the veterans are housed. The purpose of these provisions is to lay the foundation for contract which may be accepted by veterans being admitted to the hospital by execution of the application for admission, or, as to patients already in a hospital, by remaining and accepting further treatment.

The cases cited, supra, illustrate the contractual character of the provisions of this statute and that the vesting of the veterans' personal property in the United States is not a matter of escheat or automatic vesting. Such in fact was the position taken by the federal gov-

ernment in *In re Witte's Estate*, 1953, 174 Kan. 360, 255 P. 2d 1039, 1044, which was stated as follows:

"* * * Its [United State's] principal argument however is that the statute is not one of escheat or of the control of who shall receive a decedent's estate, but *one providing for a contract, and that it bases its claim on a contract authorized by and executed under the statute.* In support it relies principally on United States v. Stevens, 302 U.S. 623, 58 S. Ct. 388, 82 L. ed. 484. * * *" (Emphasis supplied)

Again in *United States v. Stevens*, 302 U.S. 623, 628, 82 L. ed. 484, 488, mentioned in the Witte case, the government based its claim under this statute on contract:

"There is no ambiguity in the contract or in the Act which authorized it. * * *

"The *contract*, however, is valid under the applicable state law. * * *

"The claim of the Government is *based on a contract* between the veteran and the Home. * * * *Both parties were competent to make the contract.* This contract is valid and enforceable * * *." (Emphasis supplied)

Likewise in *United States v. Security-First National Bank of Los Angeles*, 130 F. Supp. 521, 522, the federal government rested its claim on contract:

"* * * The Government claims that on the death of Morris, it became the owner of this deposit by virtue of a *contract between the deceased and the Veterans Administration* * * *." (Emphasis supplied)

While § 17a speaks of a conclusive presumption of contract arising out of the fact of death of a veteran in a veterans' facility or hospital, this provision must be

read in context in relation to the subchapter as a wh
as well as in relation to the law of contract generally.
fact this section expressly states that the presumpti
shall be subject to the conditions of the subchapter. Th
there must be an *acceptance* of care or treatment by t
veteran which shall constitute an *acceptance* of the p
visions and conditions of the subchapter which shall ha
the effect of an *assignment*. An "acceptance" conte
plates a person mentally competent and capable of a
cepting. A valid contract can arise only where a perso
capable of contracting. *Dexter v. Hall,* 82 U.S. 20,
L. ed. 73; *German Savings and Loan Soc. v. DeLashmu*
(C.C.,D. Or.) 67 F. 399; *Graham v. Allen,* 116 Or. 501, 2
P. 1007. The presumption of contract arising under t
section must necessarily presuppose a person capa
of contracting.

That the validity of a contract arising under this st
ute is subject for judicial inquiry with respect to t
capacity of veterans admitted to a hospital was obser
in *United States v. Security-First Nat. Bank of L*
Angeles, supra (130 F. Supp. 521, 522), at page 522
follows:

> "No party has challenged the validity of t
> agreement on the ground that there was no agr
> ment as to the footnoted matter, and although a fo
> note to an application for admission to a hospital is n
> an exemplary way to establish privity of contract
> the absence of challenge, it is sufficient. Consider
> that applicants for domiciliary care in a hospital a
> usually sick and often lacking acute mental p
> ception, the force of a footnote to the entry appli
> tion (the footnote purporting to create a special co

tract of unusual character) might be considerably diminished, and frequently destroyed by a careful inquiry into the circumstances of the execution of the application for domiciliary care. * * * That contracts of this character may be valid if properly entered into, is firmly established by Supreme Court adjudication."

A different underlying theory exists with respect to the vesting in the United States of the unexpended federal veterans' pension funds in the estate of a veteran dying in a Veterans' Administration facility intestate and without heirs, under the provisions of 38 U.S.C. (1952 ed.) 450. The intent and meaning of this statute is that the pension is a qualified gratuity in which the federal government has retained for itself a contingent reversionary interest. The following cases are illustrative of the reversion of accumulated unexpended veterans' pensions and benefits to the federal government: *In re Lindquist's Estate,* 25 Cal. 2d 697, 144 P. 2d 438, 154 P. 2d 879; *Coakley v. Attorney General,* 318 Mass. 508, 62 N.E. 2d 659.

Petitioner for writ of certiorari has cited *In re Skriziszouski's Estate,* 382 Pa. 634, 116 A. 2d 841; *In re Gonsky's Estate,* 79 N.D. 123, 55 N.W. 2d 60; and *In re Bonner's Estate,* 192 Misc. 753, 80 N.Y.S. 2d 122, as being at variance with the Oregon Supreme Court decision. These cases were analyzed and discussed in the Warpouske opinion, 352 P. 2d 539, 547, 548, in the light of the different basic theories underlying 38 U.S.C. 17-17j and 38 U.S.C. 450, the Oregon court pointing out at page 547 that some courts had failed to observe the important dis-

tinction between the two theories. Also in the cases cited by petitioner, all the incompetent veterans apparently were under guardianship as was likewise the situation in *Estate of Maguire*, 13 D & C 2d 247, 7 Fiduc. Rep. 701 (Orphan's Court of Philadelphia County), cited in the petition for certiorari.

The Warpouske case, because of its unique facts, applies only to that narrow class of cases where mentally incompetent veterans, incapable of contracting, dying intestate and without heirs in a veterans' hospital are brought into the hospital without having a relative or a guardian of person to act for them or a court order for their commitment to the hospital. Since it is well established that 38 U.S.C. 17-17j, supra, is founded upon contract, the statute can not apply to such incompetent veterans thus involuntarily admitted. The result reached by the Oregon court in Warpouske's estate would apply only to narrow the class of such veterans and not to all incompetent veterans who might be cared for in Veterans' Administration hospitals or institutions.

II

It being well established that the provisions of 38 U.S.C. (1952 ed.) 17-17j are based upon contract, the second question presented by the petition concerning the constitutionality of a provision having a self-operating effect in the vesting in the United States of an incompetent veteran's property is hypothetical.

The cases have repeatedly viewed the statute as based upon contract. Its purpose was to provide a form of stat-

utory contract and not to effect a self-operating succession or devolution to the United States of the personal property of a veteran dying intestate and without heirs in a Veterans' Administration facility.

The recent case of *In re Turner's Estate*, 171 Cal. App. 2d 591, 341 P. 2d 376, 379, 1959, points out the nature of the statute as follows:

> "* * * This statute is not an attempt to regulate and control the devolution of property, but is based upon *contractual relationships*. United States v. Gallagher, D.C.S.D. Cal., 97 F. Supp. 1014; In re Witte's Estate, 174 Kan. 360, 255 P. 2d 1039, 36 A.L.R. 2d 717; In re Gonsky's Estate, 79 N.D. 123, 55 N.W. 2d 60; See United States v. Stevens, 302 U.S. 623, 58 S. Ct. 388, 82 L. Ed. 484; Mauck v. United States, 9 Cir., 94 F. 2d 745." (Emphasis supplied)

The federal government has itself taken the position that the statute is not one of escheat, as appears in *In re Witte's Estate*, 1953, 174 Kan. 360, 255 P. 2d 1039, 1044, supra, where the government's argument was as follows:

> "Its [United States'] principal argument however is that the statute is not one of escheat or of the control of who shall receive a decedent's estate, but *one providing for a contract, and that it bases its claim on a contract authorized by and executed under the statute*. In support it relies principally on United States v. Stevens, 302 U.S. 623, 58 S. Ct. 388, 82 L. ed. 484. * * *" (Emphasis supplied).

The right of states to control probate and the devolution of property and escheats within their own territories has long been recognized as a power belonging to the states. *Mager v. Grima*, 49 U.S. 490, 493, 12 L. ed. 1168; *United States v. Fox*, 94 U.S. 315, 320, 24 L. ed. 192. See

also *United States v. Security-First National Bank of Los Angeles*, 130 F. Supp. 521. No doubt this right of the States was carefully regarded by the Congress in framing the statute and resting it upon contract.

However, in view of the fact that it has been repeatedly held that the provisions of 38 U.S.C. 17-17j are contractual and even the United States has in the past taken the position that the statute is not one of escheat, the question presented as to the constitutionality of automatic vesting of the veteran's property is hypothetical inasmuch as the statute is one based on contract and not on the automatic vesting of property.

CONCLUSION

For the reasons advanced, the respondent submits that the petition for certiorari be denied.

Respectfully submitted,

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APPENDIX A

38 U.S.C. 17-17j (1952 ed.), the Act of June 25, 1910, 36 Stat. 736, as amended by the Act of December 26, 1941, 55 Stat. 868, provides in pertinent part:

§ 17. Vesting of undisposed personalty in United States as trustees for General Post Fund.

Effective ninety days after December 26, 1941, whenever any veteran (admitted as a veteran) shall die while a member or patient in any facility, or any hospital while being furnished care or treatment therein by the Veterans' Administration, and shall not leave surviving him any spouse, next of kin, or heirs entitled, under the laws of his domicile, to his personal property as to which he dies intestate, all such property, including money and choses in action, owned by said decedent at the time of death and not disposed of by will or otherwise, shall immediately vest in and become the property of the United States as trustee for the sole use and benefit of the General Post Fund, a trust fund prescribed by section 725s (b)(45) of Title 31.

The foregoing provisions are conditions precedent to the initial, and also to the further furnishing of care or treatment by the Veterans' Administration in a facility or hospital. The acceptance of care or treatment by any veteran admitted as such to any Veterans' Administration facility or hospital after ninety days from December 26, 1941, and as well the continued acceptance of care or treatment furnished by the Veterans' Administration after said ninety days by any veteran who is then receiving the same shall constitute an acceptance of the provisions and conditions of this subchapter and have the effect of an assignment, effective at his death, of such assets in accordance with and subject to the terms and provisions of this subchapter and the regulations issued in accordance with and pursuant thereto.

§ 17a. Presumption from death in facility of contract for disposition of property.

The fact of death of the veteran (admitted as such) in a facility or hospital, while being furnished care or treatment therein by the Veterans' Administration, leaving no spouse, next of kin, or heirs, shall give rise to a conclusive presumption of a valid contract for the disposition in accordance with this subchapter, but subject to its conditions, of all property described in section 17 of this title owned by said decedent at death and as to which he dies intestate.

* * *

§ 17c. Disbursements from Fund; payment of creditors.

Disbursements from the General Post Fund shall be made by the Division of Disbursements, Treasury Department, upon the order and within the discretion of the Administrator of Veterans' Affairs for the benefit of members and patients while being supplied care or treatment by the Veterans' Administration in any facility or hospital, and this authority is not limited to facilities or hospitals under direct administrative control of the Veterans' Administration: *Provided, however,* That there shall be paid out of the assets of the decedent so far as may be the valid claims of creditors against his estate that would be legally payable therefrom in the absence of this subchapter and without the benefit of any exemption statute, and which may be presented to the Veterans' Administration within one year from the date of death, or within the time, to the person, and in the manner required or permitted by the law of the State wherein administration, if any, is had upon the estate of the deceased veteran; and also the proper expenses and costs of administration, if any: *And provided further,* That if the decedent's estate be insolvent the distribution to creditors shall be in accordance with the laws of his domicile, and the preferences and priorities prescribed thereby shall govern, subject to any applicable law of the United States.

§ 17d. Disposition of remainder of assets; acquisition of assets by the Administrator of Veterans' Affairs.

The remainder of such assets or their proceeds shall become assets of the United States as trustee for said Post Fund and disposed of in accordance with this subchapter. If there be administration upon the decendent's estate such assets, other than money, upon claim thereof within the time required by law, shall be by the administrator of the estate delivered to the Administrator of Veterans' Affairs or his authorized representative, as upon final distribution; and upon the same claim there shall be paid to the Treasurer of the United States for credit to said Post Fund any such money available for final distribution. In the absence of administration, any money, chose in action, or other property of the deceased veteran held by any person shall be paid or transferred to the Administrator of Veterans' Affairs upon demand by him or his duly authorized representative, who shall deliver itemized receipt therefor. Such payment or transfer shall constitute a complete acquittance of the transferor with respect to any claims by any administrator, creditor, or next of kin of such decedent.

* * *

§ 17g. Notice to veterans of law.

The Administrator of Veterans' Affairs shall prescribe a form of application for hospital treatment and domiciliary care which shall include notice of the provisions of this subchapter. Within ninety days after approval hereof similar notice shall be given to each veteran then receiving care in any facility or hospital as described in this subchapter: *Provided, however,* That this requirement shall be met by posting of said notice with a copy of the prescribed form in a prominent place in each building wherein patients or members are housed.

* * *

APPENDIX B

Oregon Revised Statutes 120.010

Immediately upon the death of any person who dies intestate without heirs, leaving any real, personal or mixed property, interest or estate in this state, the same escheats to and vests in the state, subject only to the claims of the creditors and as provided in ORS 120.060 to 120.130; and the clear proceeds derived therefrom shall be paid into and become a part of the Common School Fund of this state and be loaned or invested by the State Land Board, as provided by law.

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No. 329

In the Supreme Court of the United States

OCTOBER TERM, 1960

THE UNITED STATES OF AMERICA, AS TRUSTEE FOR THE SOLE USE AND BENEFIT OF THE GENERAL POST FUND, PETITIONER

v.

STATE OF OREGON, ACTING BY AND THROUGH THE STATE LAND BOARD, AND PORTLAND TRUST & SAVINGS BANK, ACTING BY AND THROUGH THE STATE LAND BOARD

IN THE MATTER OF THE ESTATE OF ADAM B. WARPOUSKE

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OREGON

BRIEF FOR THE UNITED STATES

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BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the Circuit Court of Multnomah County, Oregon (R. 20–21) is unreported. The opinion of the Supreme Court of Oregon (R. 33–49) is reported at 352 P. 2d 539.

JURISDICTION

The judgment of the Supreme Court of Oregon was entered on May 18, 1960 (R. 50). The petition for a writ of certiorari was filed on August 16, 1960, and was granted on November 7, 1960. 364 U.S. 867 (R. 51). The jurisdiction of this Court rests on 28 U.S.C. 1257(3).

QUESTIONS PRESENTED

1. Whether 38 U.S.C. (1952 ed.) 17–17j,[1] which vests in the United States (as trustee for the General Post Fund) the personal property of veterans who die intestate and without heirs while receiving care or treatment in the hospital or domiciliary facilities of the Veterans Administration, requires the existence of a common law contract between the veteran and the United States, and thus does not apply to the property of veterans who were incompetent at the time of their admission to the Veterans Administration facility.

2. Whether Congress can constitutionally provide, as a condition to the furnishing of care or treatment in its facilities by the Veterans Administration to an incompetent veteran, that if he dies in such facilities intestate and without heirs, his personal property shall immediately vest in and become the property of the United States for the sole use and benefit of other veterans in providing for religious and recreational programs in these facilities.

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[1] 38 U.S.C. (1952 ed.) 17–17j is now codified as 38 U.S.C. 5220–5228. See fn. 2, *infra*, p. 3.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The United States Constitution provides in relevant part as follows:

> Fifth Amendment:
>
> No person shall * * * be deprived of life, liberty, or property, without due process of law; * * *.
>
> Tenth Amendment:
>
> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

2. 38 U.S.C. (1952 ed.) 17–17j,[2] the Act of June 25, 1910, 36 Stat. 736, as amended by the Act of December 26, 1941, 55 Stat. 868, provides in pertinent part (as it appeared in the United States Code):

> § 17. *Vesting of undisposed personalty in United States as trustee for General Post Fund.*
>
> Effective ninety days after December 26, 1941, whenever any veteran (admitted as a veteran) shall die while a member or patient in any facility, or any hospital while being furnished care or treatment therein by the Veterans' Administration, and shall not leave surviving him any spouse, next of kin, or heirs entitled, under the laws of his domicile, to his personal property as to which he dies intestate,

[2] The provisions of this statute were reenacted without significant change by the Act of June 17, 1957 (Title XIX), 71 Stat. 149. The statute was codified by the Act of Sept. 2, 1958, 72 Stat. 1256, as 38 U.S.C. 5220–5228. Since the veteran here died in 1956, we refer throughout this brief to the statute in force at the time, and to the 1952 Code.

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all such property, including money and choses in action, owned by said decedent at the time of death and not disposed of by will or otherwise, shall immediately vest in and become the property of the United States as trustee for the sole use and benefit of the General Post Fund, a trust fund prescribed by section 725s (b)(45) of Title 31.

The foregoing provisions are conditions precedent to the initial, and also to the further furnishing of care or treatment by the Veterans' Administration in a facility or hospital. The acceptance of care or treatment by any veteran admitted as such to any Veterans' Administration facility or hospital after ninety days from December 26, 1941, and as well the continued acceptance of care or treatment furnished by the Veterans' Administration after said ninety days by any veteran who is then receiving the same shall constitute an acceptance of the provisions and conditions of this subchapter and have the effect of an assignment, effective at his death, of such assets in accordance with and subject to the terms and provisions of this subchapter and the regulations issued in accordance with and pursuant thereto.

§17a. *Presumption from death in facility of contract for disposition of property.*

The fact of death of the veteran (admitted as such) in a facility or hospital, while being furnished care or treatment therein by the Veterans' Administration, leaving no spouse, next of kin, or heirs, shall give rise to a conclusive presumption of a valid contract for the disposition in accordance with this subchapter,

but subject to its conditions, of all property described in section 17 of this title owned by said decedent at death and as to which he dies intestate.

* * * * *

§ 17c. *Disbursements from Fund; payment of creditors.*

Disbursements from the General Post Fund shall be made by the Division of Disbursements, Treasury Department, upon the order and within the discretion of the Administrator of Veterans' Affairs for the benefit of members and patients while being supplied care or treatment by the Veterans' Administration in any facility or hospital, and this authority is not limited to facilities or hospitals under direct administrative control of the Veterans' Administration: *Provided, however,* That there shall be paid out of the assets of the decedent so far as may be the valid claims of creditors against his estate that would be legally payable therefrom in the absence of this subchapter and without the benefit of any exemption statute, and which may be presented to the Veterans' Administration within one year from the date of death, or within the time, to the person, and in the manner required or permitted by the law of the State wherein administration, if any, is had upon the estate of the deceased veteran; and also the proper expenses and costs of administration, if any: *And provided further,* That if the decedent's estate be insolvent the distribution to creditors shall be in accordance with the laws of his domicile, and the preferences and priorities prescribed there-

by shall govern, subject to any applicable law of the United States.

§ 17d. *Disposition of remainder of assets; acquisition of assets by the Administrator of Veterans' Affairs.*

The remainder of such assets or their proceeds shall become assets of the United States as trustee for said Post Fund and disposed of in accordance with this subchapter. If there be administration upon the decedent's estate such assets, other than money, upon claim thereof within the time required by law, shall be by the administrator of the estate delivered to the Administrator of Veterans' Affairs or his authorized representative, as upon final distribution; and upon the same claim there shall be paid to the Treasurer of the United States for credit to said Post Fund any such money available for final distribution. In the absence of administration, any money, chose in action, or other property of the deceased veteran held by any person shall be paid or transferred to the Administrator of Veterans' Affairs upon demand by him or his duly authorized representative, who shall deliver itemized receipt therefor. Such payment or transfer shall constitute a complete acquittance of the transferor with respect to any claims by any administrator, creditor, or next of kin of such decedent.

* * * * * *

§ 17g. *Notice to veterans of law.*

The Administrator of Veterans' Affairs shall prescribe a form of application for hospital treatment and domiciliary care which shall include notice of the provisions of this subchapter. Within ninety days after approval

hereof similar notice shall be given to each veteran then receiving care in any facility or hospital as described in this subchapter: *Provided, however,* That this requirement shall be met by posting of said notice with a copy of the prescribed form in a prominent place in each building wherein patients or members are housed.

* * * * *

STATEMENT

This case involves the competing claims of the United States (as trustee of the General Post Fund) and the State of Oregon to the net estate from the personal property of a deceased veteran of the armed services who died intestate and without heirs in a Veterans Administration hospital after being admitted for care and treatment. The claim of the United States, as trustee of the General Post Fund, is founded on the provisions of 38 U.S.C. 17–17j, *supra,* pp. 3–7. The General Post Fund is used exclusively to provide veterans in facilities of the Veterans Administration with recreational and religious programs and equipment. The State of Oregon's claim is based upon its escheat statute.

The basic facts are not in dispute. Adam B. Warpouske served in the United States Army during World War I. Thereafter, he was awarded a pension by the Veterans Administration for a non-service-connected mental disability (R. 53). He suffered from mental illness during the remainder of his life (R. 22).

Between the years 1930 and 1945, upon his sworn statement that he could not pay the necessary expenses of hospital or domiciliary care (*e.g.*, R. 56), Warpouske was admitted to hospital and domiciliary facilities of the Veterans Administration in various parts of the country on fourteen different occasions (R. 64–65, 70–71). During this period, he spent a total of approximately seven years, without cost to himself, in such facilities (R. 64–65, 70–71). The substantial treatment and care given him during the seven years in these facilities included treatment and care for both physical and mental impairments (R. 64–65).

In connection with his admissions to VA facilities, Warpouske signed a number of application forms in which he agreed that, if he should die intestate and without heirs "while under care" in such a facility, his property would vest in the Veterans Administration for use of the Post Fund.[3] Although some

[3] The form of the agreement was not identical in each application, but a typical agreement contained the following language: "I agree that, in the event of my death while under care, leaving no heirs at law nor next of kin, all personal property owned by me at the time of my death, including money or choses in action held by me and not disposed of by will, whether such property be the proceeds of pension, compensation, retirement pay, or life insurance, or otherwise derived, shall vest in and become the property of the Veterans Administration for the sole use and benefit of the post fund, and that all my personal property shall upon my death, while under care, at once pass to and vest in the Veterans Administration subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within 5 years after my death." (R. 56.)

psychiatric examinations during the periods of institutionalization indicated that he was incompetent, others indicated that he was competent even though suffering from mental illness.[4] In 1945, he was discharged from a Veterans Administration hospital in Wood, Wisconsin, as improved and "competent," although still "unemployable" (R. 72). He was awarded a total and permanent disability pension which continued until his death (R. 52, 73).

On December 31, 1955, while a resident of Multnomah County, Oregon, the veteran was admitted to the Good Samaritan Hospital in Portland, for treatment of a hip fracture and a cerebral hemorrhage (R. 31, 35). Because it appeared that he was without funds, he was transferred on January 5, 1956, to the Multnomah County Hospital for treatment at the expense of the county (R. 7, 31, 35). He remained there until March 1, 1956, when he was transferred to the Veterans Hospital in Portland for further treatment and hospitalization (R. 31, 35).[5] At the

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[4] *E.g.*, R. 67.

[5] The Supreme Court of Oregon characterized this admission to the Veterans Hospital as an "involuntary admission" (R. 36). It is true that Warpouske was mentally incompetent and in a state of coma or semi-coma prior to the transfer (R. 31, 36). On the other hand, the record clearly refutes any suggestion, which might be attributed to the phrase "involuntary admission", that the Veterans Administration removed Warpouske from the County Hospital against his will or that of the Oregon authorities. On the contrary, while, as the court below stated, "[t]here is no record indicating who made the decision for the transfer" (R. 36), the record leaves no doubt that he was transferred and that the Oregon officials were the transferring authority (R. 31–32, 36). Moreover, any inference that the Veterans Administration initiated this transfer pre-

time of his admission to this facility he was incompetent; his condition varied from comatose to semi-comatose (R. 31, 36). On March 9, 1956, the Portland Trust Bank was appointed as his guardian (R. 36). There was no evidence that the guardian protested or objected to his remaining in the Veterans Hospital or to his receiving continued care and treatment there.

Warpouske died in the Veterans Hospital on March 19, 1956, intestate and leaving no known heirs (R. 11, 14, 19). A few days before, it had been discovered that he was the sole heir to the estate of his brother, who had died intestate the previous fall in Wisconsin[6] (R. 4). By reason of this inheritance, Warpouske left a net estate of $13,727.14, of which $971.47 was attributable to unused federal pension funds (R. 23–24). The State of Oregon conceded that the United States was entitled to these latter funds by reason of 38 U.S.C. (1952 ed.) 450(3).

Under the provisions of 38 U.S.C. 17–17j, *supra*, pp. 3–7, the Administrator of Veterans Affairs filed in

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supposes surveillance by the Veterans Administration of all state and local charity hospitals for the purpose of obtaining qualified patients—a presupposition plainly without warrant.

[6] Warpouske's brother, named Steve Warpechowski, also suffered from serious mental disabilities prior to his death in a V.A. hospital in Wisconsin. Apparently because of their similar medical histories, a hospital record pertaining to Warpechowski's history was accidentally included in the record in this case, and stipulated by the parties and relied on by the court below as a record of Adam Warpouske. That record was designated Exhibit 3 (R. 53-54) and clearly refers to Steve Warpechowski (R. 54). Its erroneous inclusion, however, has no bearing on the basic facts in this case.

the Oregon probate court a "Claim for Personal Property in Estate" on behalf of the United States, as trustee of the General Post Fund (R. 18–19). The Oregon State Land Board filed a petition for escheat on behalf of the State of Oregon (R. 11–13). After trial, the Oregon probate court (the Circuit Court for Multnomah County, Department of Probate) found that the deceased was not mentally competent to understand the consequences of his acceptance of hospitalization in the Veterans Administration hospital or to enter into any contract respecting his hospitalization (R. 23). For that reason, and because it viewed 38 U.S.C. 17–17j as requiring a common-law contract, it held (R. 23):

> * * * the provisions of § 17, Title 38, United States Code, cannot and do not control the disposition or vesting of his personalty at the time of his death.

Consequently, except for that portion of the estate attributable to federal pensions, the court ordered the escheat of the net estate to Oregon.

On appeal, the Supreme Court of Oregon affirmed. The court expressed the view that 38 U.S.C. 17–17j would be in violation of the Fifth and Tenth Amendments to the United States Constitution if applied to the estate of a veteran who had no capacity to contract when he entered a Veterans Administration hospital. Primarily because of this view, the court concluded that the statute should be interpreted as requiring a common-law contract and therefore as inapplicable to a veteran incompetent at the time of

admission to the Veterans Administration hospital. The court also pointed to this Court's decision in *United States* v. *Stevens*, 302 U.S. 623, holding that, where the veteran executes a contract on admission to the Veterans Administration hospital, his property passes to the General Post Fund pursuant to the terms of his agreement, upon his death intestate and without known heirs (R. 33–49).

SUMMARY OF ARGUMENT

I

The ruling of the Oregon Supreme Court that 38 U.S.C. 17–17j, *supra*, pp. 3–7, is predicated on the existence of a common law contract between the government and the veteran, and consequently is not operative with respect to the personal estate of a veteran, like Warpouske here, admitted incompetent into a Veterans Administration hospital, is refuted by the terms of the statute, its history, the consistent administrative practice, and the existing case law.

A. In explicit terms, 38 U.S.C. 17 states, without qualification, that "whenever *any veteran* * * * shall die" while a patient at a V.A. facility, intestate and without heirs, his "personal property * * * *shall immediately vest* in and become the property of the United States as trustee for the sole use and benefit of the General Post Fund * * *" (emphasis added). This broad vesting clause, on which the claim of the United States is based, clearly establishes that the statute is automatic or self-executing in operation in the case of all veterans, competent and incompetent alike, who are admitted to Veterans Administration hospitals

and homes, and die there without leaving heirs or a will.

The remaining provisions of 38 U.S.C. 17–17j confirm the congressional intent reflected in the opening vesting clause. While the second paragraph of 38 U.S.C. 17 contains the terms "acceptance" and "assignment", these words plainly were not used in a context implying an actual consensual agreement. Instead, the paragraph provides that "*acceptance of care or treatment* by *any veteran* * * * *shall constitute an acceptance* of the provisions and conditions of this subchapter and *have the effect* of an assignment, effective at * * * death, of such assets * * *" (emphasis added). Similarly, 38 U.S.C. 17a, providing that the death of a veteran, who has been furnished care or treatment in a V.A. facility gives rise to a "*conclusive presumption* of a valid contract" (emphasis added) for disposition of his personalty in accordance with the vesting provision, is inconsistent with the view that Congress intended to require an actual contract between the veteran patient and the government. Nor do the notice requirements of 38 U.S.C. 17g detract from the force and effect of the initial vesting provision. Section 17g merely directs the Administrator to give notice of the statutory provisions, either on the application form or by posting, and does not require actual consent or knowledge on the veteran's part.

B. Congress was aware in 1941 when 38 U.S.C. 17–17j was enacted, through the annual reports of the Administrator of Veterans' Affairs, that for years almost 60% of the patient population of V.A. facili-

ties consisted of veterans with neuropsychiatric disabilities, thousands of whom were presumably admitted while incompetent. The application of the vesting provision (38 U.S.C. 17) to *"any veteran"* dying while a patient, in the light of congressional awareness of these significant statistics, indicates the purpose of Congress to obtain, for the benefit of those veterans remaining in V.A. facilities through the General Post Fund, the personal estates of both competent and incompetent admittees leaving no heirs and no will. That intention is further reflected by the fact that the 1941 Act eliminated certain formalities, looking toward an actual consensual understanding, required in the predecessor statute of 1910.

C. The consistent interpretation of the statute by the Veterans Administration since 1941, as well as the applicable case law, fully support the self-executing interpretation we advance. Other state court decisions involving the estate of a veteran admitted incompetent, like Warpouske, have held the statute to be self-executing and not as requiring a common law contract. There are no decisions to the contrary. Reliance by the court below and respondents on this Court's decision in *United States* v. *Stevens,* 302 U.S. 623, and a line of lower court decisions following *Stevens,* is unwarranted. *Stevens,* in contrast to this case, involved the admission to a V.A. facility of a *competent* veteran who, by virtue of his application, executed an actual contract for disposition of his property on death. In holding that the personal estate in *Stevens* passed to the United States under this contract, the Court never reached the issue posed here.

II

There is no merit to the view expressed by the Oregon Supreme Court that, if interpreted as self-executing and thus applicable to the personal property in the estate of Warpouske, 38 U.S.C. 17–17j would violate the Constitution of the United States.

A. Primary emphasis was placed by the state court on the Tenth Amendment. However, as firmly established in numerous decisions of this Court, federal legislation does not violate the Tenth Amendment if it is enacted pursuant to a power granted the federal government under the Constitution to accomplish a legitimate purpose, and if the legislation adopts means which are both necessary and appropriate to the permitted purpose and not prohibited by any other part of the Constitution. E.g., *McCulloch* v. *Maryland,* 4 Wheat. 316; *Case* v. *Bowles,* 327 U.S. 92.

38 U.S.C. 17–17j plainly comes within these criteria. The authority to grant benefits to veterans of our armed forces, including hospitalization and domiciliary care, stems from the delegated power to provide for the common defense and to raise and maintain an army and navy (Art. I, Section 8). This authority to provide benefits carries with it, of course, the power to legislate on the entire matter of such benefits, including the imposition of terms and conditions. Similarly, there can be no doubt that the purpose to which the statute in question is directed is a legitimate purpose within the delegated power. That purpose is to provide, through the General Post Fund, for recreational and religious equipment and activities in V.A. hospitals and domiciliaries.

Nor can there be any doubt that the means adopted—the vesting mechanism of the Act—are necessary and proper, and reasonably related, to the permitted end of aiding the general comfort and welfare of the veterans in V.A. facilities. The congressional method is most generous to the deceased veterans in that nothing is taken from them while alive and nothing from their heirs or devisees upon their death; the veteran's personalty vests in the United States for the Post Fund only upon his death without heirs or will. This condition on the extension of gratuitous hospital or domiciliary care and treatment to the veteran is bottomed on the special relationship existing between the veteran and the government. The courts, in considering a great mass of federal legislation dealing with veterans, have always considered that this special relationship gives Congress broad discretion in imposing terms and conditions on the benefits it extends to these men. Moreover, it is altogether fair and reasonable that the estates, if any, of men like Warpouske who because of indigence have qualified for free V.A. care and treatment and who have had the advantage of comforts provided by Post Fund expenditures should be utilized for the benefit of veterans similarly situated. In this connection, it is significant that a number of states, as an exception to their general escheat laws, employ essentially the same vesting procedure as this federal Act in connection with the estates of heirless veterans, dying intestate, who are hospitalized and housed in state-maintained institutions.

Finally, since 38 U.S.C. 17–17j is a reasonable exercise of federal power, as it clearly is, it makes no difference that it affects the operation of the state escheat statute in this and similar instances. Since the federal law is supreme under the Constitution, it is no objection that the exercise of the federal power encroaches on a state power or is attended by certain incidents similar to those attending the exercise of a state power. *E.g., Case* v. *Bowles*, 327 U.S. 92; *United States* v. *Darby*, 312 U.S. 100.

B. In addition to its concern over the Tenth Amendment, the court below expressed its belief that 38 U.S.C. 17–17j, as interpreted by the government, would violate the Fifth Amendment. This view is plainly without merit, both with respect to the state and to the veteran. The Oregon court did not suggest that a state's right of escheat is within the ambit of that Amendment, and in any event it is doubtful that a state can be termed a "person" within the Amendment. Moreover, the general right of succession to property is not protected by the Constitution.

Nor does the statute improperly interfere with the veteran's rights under the Fifth Amendment since nothing is taken from him, or even from any heir or devisee. Vesting under 38 U.S.C. 17–17j occurs only when all individual property rights have expired, and in any case is, as we have pointed out, a reasonable exercise of Congressional power for a legitimate end.

ARGUMENT

I

UNDER 38 U.S.C. 17–17j, THE PERSONAL PROPERTY OF ALL VETERANS, INCLUDING THOSE INCOMPETENT UPON ADMISSION, WHO DIE INTESTATE AND WITHOUT HEIRS WHILE PATIENTS IN VETERANS ADMINISTRATION FACILITIES, VESTS IN THE UNITED STATES FOR USE OF THE GENERAL POST FUND

Contrary to the ruling below, the Congressional enactment vesting in the United States (for the use of the General Post Fund) personal property left by veterans dying intestate and heirless in a Veterans Administration facility does not presuppose a consensual arrangement between the veteran and the government, so that the statute can have no effect where the veteran is incompetent to contract. Rather, Congress provided a self-executing transfer of such property to the United States on the death of the veteran, regardless of his actual consent to the arrangement. This is made plain by the terms of the legislation taken as a whole, by its history, and by the previous judicial decisions and administrative practice.

A. THE STATUTORY PROVISIONS

1. We submit that, whether examined separately or together, the provisions of 38 U.S.C. 17–17j, *supra*, pp. 3–7, apply to all veterans who die intestate and without heirs while patients in a Veterans Administration facility. Congress has decreed in 38 U.S.C. 17–17j that, no matter whether he is competent or incompetent at the time of admission, whenever a veteran dies in a V.A. facility, without heirs and without

leaving a will, and after receiving free care and treatment,[1] his personal estate will vest in the United States for the sole use and benefit of the General Post Fund. The only relevant inquiry is whether the veteran died intestate and without heirs while admitted as a patient. Had Congress desired to predicate operation of the statute on the existence of an actual common law contract and thus, of necessity, to differentiate between competent and incompetent admittees, as the court below ruled, it could and would have done so in unmistakable terms. Instead, Congress provided for an automatic vesting of the property in the United States on the death of the intestate-and-heirless veteran.

In reaching its conclusion as to the effect of the statute, the court below did not give any consideration to the first paragraph of 38 U.S.C. 17, which states without qualification that "whenever any *veteran* * * * shall die" while a patient at a facility of the Veterans Administration intestate and without heirs, his "personal property * * * *shall immediately vest* in and become the property of the United States as trustee for the sole use and benefit of the General Post

[1] Under the provisions of 38 U.S.C. (1952 ed.) 706, Congress has provided free hospitalization and domiciliary care for all veterans with service-connected disabilities, diseases, or injuries, and free hospitalization and domililiary care, to the extent of available space, for all veterans with non-service-connected impairments who are unable to bear the necessary expenses. Warpouske's many periods of V.A. domiciliary and hospital institutionalization, including his final care and treatment at the Veterans Hospital in Oregon, were the result of non-service-connected mental and physical impairments.

Fund * * * (emphasis added). This is a clear statement that the operation of the statute, under the prescribed conditions, is automatic or self-executing with respect to each and every veteran who enters a V.A. facility as a patient; the vesting of the property does not depend on the existence of an actual contract between the veteran and the Veterans Administration. These prescribed conditions underlying the statute's operation were met here—the death of Warpouske, while a patient receiving care and treatment in a Veterans Hospital, intestate and without any known heirs.

To reach the contrary conclusion that the statute is not self-executing, the court below relies on the remaining provisions of 38 U.S.C. 17–17j as demonstrating that Congress intended an actual common law contract as a prerequisite to the statute's operation. Properly read, these provisions reflect no such intent.

The second paragraph of 38 U.S.C. 17 does go on to stipulate that the vesting provisions are "conditions precedent to the initial, and also to the further furnishing of care or treatment by the Veterans' Administration in a facility or hospital" and that the "*acceptance of care or treatment* by *any veteran* admitted as such * * * *shall constitute an acceptance* of the provisions and conditions of this subchapter and *have the effect* of an assignment, effective at his death, of such assets * * *" (emphasis added). The court below selected and underscored the words "acceptance" and "assignment" (R. 37). However, these provisions, examined in their entirety, do not establish the prerequisites of a common law contract; they merely establish a particular event—the acceptance of care and treatment in a V.A. hospital or

domiciliary—as *constituting* an acceptance of the vesting provision and as having *the effect* of an assignment, *i.e.*, being the equivalent of an assignment. Self-executing legislation providing that certain conditions resulting in a transfer of property are tantamount to the existence of a contract for that purpose is not the same thing as legislation requiring an actual contract to accomplish the transfer. Moreover, the opening sentence of the paragraph ["[t]he foregoing provisions are conditions precedent to the initial, and also to the further furnishing of care or treatment by the Veterans' Administration in a facility or hospital."] shows that Congress did not intend the knowing consensual "acceptance" of care to be a necessary prerequisite to the vesting provisions of the prior paragraph of Section 17.

The next section, 38 U.S.C. 17a, does not detract from the force and effect of Section 17 but, on the contrary, affords additional proof that no actual contract was envisaged as a condition precedent to the operative effect of the statute. It provides that the death of a veteran, while being furnished care or treatment in a Veterans Administration facility, gives rise to a "*conclusive presumption* of a valid contract" for the disposition of his property in accordance with the statute (emphasis added). This provision plainly reflects the self-executing design of the statute. By making the presumption conclusive, rather than rebuttable, Congress was reiterating that the event of operative significance was the death of the veteran while accepting care and treatment as a patient in a V.A. facility. To provide for a conclusive presumption "is to make a rule of substantive law". 9 Wigmore, *Evidence* (1940), § 2492, p. 292. Accordingly,

although it is phrased in spurious contractual terms, Section 17a is wholly inconsistent with the view of the court below that Congress intended to require an actual contract—a consensual arrangement—between the veteran and the Government.

Finally, 38 U.S.C. 17g lends no support to the refusal of the court below to give effect to the vesting provisions of Section 17. Section 17g directs the Administrator of Veterans Affairs to give notice of the statutory provisions on the application form for admission to V.A. institutions. This requirement, however, may be satisfied by the posting of the terms of 38 U.S.C. 17–17j in a prominent place in a hospital or domiciliary.[8] Actual notice of the terms of the statute is not made a prerequisite to the statute's operation. More important, whether notice is accomplished by means of the application form or posting, there is no requirement that the government obtain actual consent to the vesting provisions of the statute from each admittee.[9]

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[8] Notice (either on the form supplied to those competent or physically able to sign it, or by posting) was obviously deemed desirable to inform the admittee, particularly the veteran without near relations, that he might still dispose of any personalty he might possess by will or gift, rather than allow it to pass to the General Post Fund.

[9] Form 10–P–10, which is currently used by V.A. for application purposes and was the form in use at the time of Warpouske's admission to the V.A. hospital in Oregon, contained a section providing the following acknowledgment:

"I acknowledge notice of the effect of the law mentioned on the reverse side hereof."

On the reverse side of the application the following notice appeared:

"Note.—The law provides that upon the death of any veteran receiving care or treatment by the Veterans Administration in

B. THE LEGISLATIVE HISTORY

1. Although the Senate and House Reports [10] on the Act of December 26, 1941, 38 U.S.C. 17–17j, *supra*, shed little light on the issue here, there are other significant elements in the legislative history which tend to support our interpretation of the Act. At the time 38 U.S.C. 17–17j was passed in 1941 and for years prior thereto, a substantial number of veterans admitted to V.A. facilities for care and treatment were admitted because of mental diseases.[11] Congress was

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any institution leaving no widow (widower), next of kin or heir entitled to inherit, all personal property, including money or balances in bank, and all claims and choses in action, owned by such veteran, and not disposed of by will or otherwise, will become the property of the United States as trustee for the Post Fund." See, *e.g.*, *Estate of Turner*, 171 Cal. App. 2d 591, 593, 341, P. 2d 376, 378.

The record does not show that Warpouske signed any such form on his transfer to the Veterans Hospital in Oregon. He was constantly in a state of coma or semi-coma throughout his last hospitalization in both the Oregon hospitals and the Veterans Hospital (R. 36).

The application form in use under the 1910 Act, on the other hand, contained a provision requiring the express agreement of the applicant to the statutory terms. See footnote 15, *infra*, p. 25. See also, *United States* v. *Stevens*, 302 U.S. 623, 625.

[10] Sen. Rept. No. 900, H. Rept. No. 609, 77th Cong., 1st Sess. No record of a hearing in either House has been found. The bill was drafted by the Veterans Administration and was approved and passed without modification. 87 Cong. Rec. 5850–5851, 9771.

[11] The Annual Reports of the Administrator of Veterans' Affairs show that this trend has continued to the present time. Moreover, we have been advised by the Veterans Administration that, as of April 30, 1960, it had a total of 105,404 incompetent veterans on its rolls, approximately 52,300 of whom were under treatment in 39 V.A. neuropsychiatric hospitals, and

not unaware of this fact since each Annual Report of the Administrator of Veterans' Affairs to Congress indicated the problems involved in the care and treatment of so large a portion of the Veterans Administration's patient population. Indeed, the Reports between 1936 and 1941, the five-year period preceding passage of the new legislation, show that the number of veterans receiving care and treatment for neuropsychiatric diseases in Veterans Hospitals, at the end of each of these years, was never less than 56.92% of the total patient population and that this percentage increased to 59.14% in 1941.[12] In addition, approximately one-third to one-half of the veterans receiving care and treatment during these years in domiciliaries were mental patients.[13] Finally, the statistics for these years indicate that thousands of veterans were being admitted each year because of neuropsychiatric impairments.[14]

These statistics, brought to Congress' attention year after year, illustrate as well as anything that, when Congress provided in 1941 for the immediate vesting of personal property of *"any veteran"* dying in the specified circumstances, it was referring to the total patient population of V.A. facilities, including the 55–60% mentally impaired veterans, many of whom

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several additional thousand of whom were under treatment in other types of V.A. hospitals and institutions. Although there are no available statistics, it is believed that a very high percentage of the mentally ill patients were incompetent at the time of their admission to the V.A. facility.

[12] See the Annual Reports for 1936, p. 6; 1937, p. 5; 1938, p. 9; 1939, p. 7; 1940, p. 7; 1941, p. 8.

[13] See the Annual Reports for 1936, p. 8; 1937, p. 8; 1938, p. 12; 1939, p. 10; 1940, p. 10; 1941, p. 10.

[14] *E.g.*, Annual Report, 1940, p. 10.

were presumably incompetent (like Warpouske) and admitted as such. Had Congress desired to exclude from the operative effect of the statute so large a number of veterans by imposing the requirement of a common law contract, it would have done so in the clearest of terms. The failure to do so, and, instead, the application of that statute's reach to "*any* veteran", in the light of these informative statistics, can hardly be termed an unknowing or inadvertent action.

2. The predecessor to the 1941 Act, 38 U.S.C. 17–17j, was the Sundry Appropriations Act of June 25, 1910, 36 Stat. 703, 736.[18] That Act provided that the "ap-

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[18] That statute (as amended, 24 U.S.C. (1940 ed.) 136) provided:

"136. *Disposition of personal property of deceased members.*

"The application of any person for membership in the National Home for Disabled Volunteer Soldiers and the admission of the applicant thereunder shall be and constitute a valid and binding contract between such applicant and the Administrator of Veterans' Affairs that on the death of said applicant while a member of such home, leaving no heirs at law nor next of kin, all personal property owned by said applicant at the time of his death, including money or choses in action held by him and not disposed of by will, whether such property be the proceeds of pensions or otherwise derived, shall vest in and become the property of said Administrator for the sole use and benefit of the post fund of said home, the proceeds to be disposed of and distributed among the several branches as may be ordered by said Administrator, and that all personal property of said applicant shall, upon his death, while a member, at once pass to and vest in said Administrator, subject to be reclaimed by any legatee or person entitled to take the same by inheritance at any time within five years after the death of such member. The Administrator of Veterans' Affairs is directed to so change the form of application for membership as to give reasonable notice of this provision to each applicant, and as to contain the consent of the applicant to accept membership upon the conditions provided in this section."

plication of any person for membership" in the National Home for Disabled Volunteer Soldiers [16] and the "admission of the applicant thereunder shall be and constitute a valid and binding contract". The managers of the Home were directed to change the form of application to give reasonable notice and "to contain the consent of the applicant" of the conditions imposed by the statute. This provision was merely a directive, and not a prerequisite to the validity of the contract. The only requirements for the statutory contract were "the application" and "the admission of the applicant thereunder". Even under the 1910 Act, therefore, the competence of the veteran at the time he was admitted (on his application) was probably irrelevant and the Act applied alike to competent and incompetent veterans.

In any case, the 1910 Act was amended by the Act of December 26, 1941, 55 Stat. 868, and became 38 U.S.C. 17–17j. The primary objective of the amendment was to enlarge the coverage of the 1910 Act to include veterans who died while receiving hospital treatment, as well as those who were receiving domiciliary care. H. Rept. No. 609, 77th Cong., 1st Sess.; Sen. Rept. No. 900, 77th Cong., 1st Sess. The earlier

[16] The National Home for Disabled Volunteer Soldiers was established by legislation in 1866. Although the branches of the Home scattered throughout the country were primarily domiciliary, they offered incidental hospital and medical care. In 1930, the Home for Disabled Volunteer Soldiers and the hospitals previously administered by the United States Veterans' Bureau were consolidated under the control of the Veterans Administration. See the preface to 38 United States Code Annotated, Brief History of Legislation Pertaining to Veterans' Benefits, pp. 28–29.

Act, however, was completely recast, enlarged, and made more detailed. Of particular significance is the fact that Congress dispensed with the prior formal requirements of an application and admission thereunder, and omitted any attempt to obtain the consent of the individual veteran. Thus, while the original statute was cast in the terms of certain formalities, the statute as modified was self-executing and required no agreement, and none of the other usual incidents of a contract. This history, we submit, confirms the intent of Congress that the 1941 Act should apply to both competent and incompetent veterans who die while receiving care or treatment at a V.A. installation.

3. We must recognize, of course, that Congress used language sounding in contract in the 1941 Act, as it had in the 1910 statute. But, as we have shown, Congress plainly never went so far as to require the existence of a common law contract, or any consensual arrangement, before the provisions of the 1941 Act could come into operation. On the contrary, Congress was very careful, while employing contractual-type terms, to impose the vesting of heirless intestate property as an automatic rule of law, not dependent upon the veteran's consent in any form. We surmise that this partial lack of full harmony between the language in which Congress cast the statute, and the substantive rule of law it was establishing, is attributable simply to some doubt on the part of some legislators that Congress could validly take such action without the implied agreement of the veteran.

They did desire to take that action nevertheless, but their uncertainty as to the power of Congress to lay down a rule *in invitum* led them to the embellishments of language sounding in contract. This is, of course, not uncommon with legislatures. Perhaps the most flourishing examples, at present, are the state statutes providing that use by an autoist of a state's highways shall be deemed consent to service of process on him through service on a state official, and the legislation dealing with "consent" to suit by foreign corporations doing business within a state. In the present case, as we show below (*infra*, pp. 33–50), Congress need have had no fears at all that its action would violate the Constitution, but Congress chose in 1941 to be cautious in phraseology. Its conservatism on this score should not be used to obliterate the clear rule it declared, and desired to establish.

It is true that, in a brief colloquy on the floor of the House, Congressman Rankin, the Chairman of the Committee on World War Veterans' Legislation, expressed an opinion that the proposed legislation required the agreement of the veteran as to its terms and therefore did not apply to veterans who were insane or physically unable to agree. 87 Cong. Rec. 5203. No action was taken by the House following this discussion (87 Cong. Rec. 5203–5204), and there is no indication anywhere in the legislative history that any other member of Congress subscribed this view. In the light of the terms of Sections 17–17j (which we have discussed *supra*, pp. 18–22) and of the fact that the bill was drafted in the Veterans Administration (fn. 10, *supra*, p. 23), which has consistently

interpreted it in the way we suggest (fn. 18, *infra*), we do not think that this isolated and unsupported opinion of Mr. Rankin can be regarded as reflecting the opinion of Congress, even though he was the chairman of the committee. The remark is outweighed by all the other pertinent factors in the legislative history of the statute.

C. THE CASE LAW AND ADMINISTRATIVE PRACTICES

In reaching its interpretation of 38 U.S.C. 17–17j, the Oregon Supreme Court attempted to distinguish a line of state court decisions which the government contended held that the statute was self-executing, and, further, sought to derive support from another line of federal and state court decisions adopting the holding of this Court in *United States* v. *Stevens*, 302 U.S. 623. In our view, the suggested differentiation of the state rulings are unsound, and the decision in *Stevens* is plainly distinguishable.

1. The ruling of the Oregon court holding the statute inapplicable to incompetent veterans is in conflict with the other state court decisions on this issue,[17] as well as with the consistent administrative interpretation of the statute.[18] The courts of last resort in both Pennsylvania and North Dakota have held that 38 U.S.C. 17–17j covers the personality of a veteran,

[17] There are no federal court decisions involving incompetent veterans. None of the cases cited for support by the Oregon court concerned incompetent veterans.

[18] We have been advised by the Veterans Administration that since 1941 the statute has been administratively interpreted as applying to competent and incompetent veterans alike (Pet. App. 44–45). This interpretation, of course, is entitled to great weight.

admitted as incompetent to a V.A. facility, who died while a patient there, intestate and without heirs. *In re Estate of Skriziszouski,* 382 Pa. 634, 116 A. 2d 841; *In re Gonsky's Estate,* 79 N.D. 123, 55 N.W. 2d 60. The decision below is also in conflict with a lower court decision in New York. *In re Bonner's Estate,* 192 Misc. 753, 80 N.Y.S. 2d 122 (Sur. Ct., Queens Co.).

In *Skriziszouski,* the Supreme Court of Pennsylvania applied 38 U.S.C. 17–17j to the entire estate of a veteran who was incompetent when he entered a V.A. institution. While the court below endeavored to distinguish the case on the ground that most of the estate was derived from federal pension benefits, the holding of the Pennsylvania court covers non-federal as well as federal funds, and thus does not justify the distinction. Moreover, a lower Pennsylvania court has expressly held that *Skriziszouski* controls, regardless of the proportion of the incompetent veteran's estate which can be traced to federal pension moneys. *Estate of Maguire,* 13 D. and C. 2d 247, 7 Fiduc. Rep. 701 (Orphans Ct., Philadelphia).

A similar result was reached by the Supreme Court of North Dakota in *In re Gonsky's Estate.* The Oregon Supreme Court also distinguished *Gonsky* on the ground that the estate in that case was derived from federal pensions and therefore became the property of the United States under 38 U.S.C. (1952 ed.) 450(3). The attempted distinction, however, cannot be squared with the express language of the *Gonsky* opinion that "the facts in this case clearly bring it within the provisions of Sections 17, 17a, 17f, Title

38 USCA", the lengthy discussion of 38 U.S.C. 17–17j as applied to the facts of the case, and, finally, the court's holding that the property passed to the United States under 38 U.S.C. 17–17j "for the sole use and benefit of the General Post Fund."[19] 79 N. Dak., at 130, 136.

In *Bonner's, supra,* the New York court held the statute applicable to the entire estate of a veteran admitted while incompetent to a V.A. facility. The estate included substantial amounts not shown to have been derived from federal pension benefits. The court ruled that, under the 1941 Act, there was no requirement of any actual contract or agreement between the veteran and the Government.

2. Nothing in *United States* v. *Stevens,* 302 U.S. 623, calls for the result reached below. In that case, a competent veteran entered into an express contract for the disposition of his property, pursuant to the Sundry Appropriations Act of June 25, 1910, *supra,* pp. 25–26, the predecessor of 38 U.S.C. 17–17j.[20] This Court found that the situation presented all the requirements of a valid common law contract, and that the veteran's property passed to the government,

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[19] Property passing to the United States by virtue of 38 U.S.C. (1952 ed.) 450(3) is not used for the General Post Fund but is credited to current appropriations for payment of compensation, insurance, or pensions.

[20] He did this by signing the application form which, under the 1910 Act, provided for his express consent to leave his estate in accordance with the provisions of that Act.

by virtue of the contract, upon his death in a V.A. facility, intestate and without heirs.[21]

Not faced with the admission of an incompetent veteran or one physically unable to contract, the Court in *Stevens* obviously did not have to, nor did it, reach any questions concerning the effect of the federal statute in the circumstances presented here. Its observation that the government's claim, in the circumstances before it, was predicated on contract in no way suggests, as the court below and respondent infer, that the government was contending or that the Court held that in circumstances such as those in this case operation of the statute would be dependent on the existence of a valid common law agreement.

The *Stevens* decision has been followed in a number of state and federal cases, on several of which the court below relied (R. 37–38). *E.g.*, *Estate of Turner*, 171 Cal. App. 2d 591, 341 P. 2d 376; *In re estate of Witte*, 174 Kan. 360, 255 P. 2d 1039; *Mauck v. United States*, 94 F. 2d 745 (C.A. 9); *United States v. Security-First Nat. Bank of Los Angeles*, 130 F. Supp. 521 (S.D. Calif.); *United States v. Peoples National Bank of Chicago*, 121 F. Supp. 331 (N.D. Ill.); *United States v. Gallagher*, 97 F. Supp. 1014 (S.D. Calif.).[22] These cases, involving either the

[21] The Court noted that the contract was not "inequitable, unjust or not upon valuable consideration." 302 U.S. at 628. It also observed generally that "Homes for the aged, needy, or infirm, in return for the benefits bestowed by them, generally receive some benefit from any property or estates of their members". *Id.* at 627.

[22] See, also, *United States v. State of California*, 143 F. Supp. 957 (N.D. Calif.); *United States v. Mid City Nat. Bank of Chicago*, 121 F. Supp. 402 (N.D. Ill.); *United States v. Brown*, 110 F. Supp. 370 (S.D. Calif.).

1910 or the 1941 Acts, all concern, like *Stevens,* a competent veteran executing a contract by signing an application for admission and thus, like *Stevens,* do not reach the issue of this case. The language in those opinions must be read in the light of the significant fact that the veterans in the cases before the courts were competent to, and did contract, with the United States.

II

38 U.S.C. 17–17j, WHICH PROVIDES FOR THE VESTING OF ANY VETERAN'S ESTATE IN THE GOVERNMENT FOR USE OF THE POST FUND IF HE DIES INTESTATE AND WITHOUT HEIRS WHILE A PATIENT IN A V.A. FACILITY, DOES NOT VIOLATE THE FEDERAL CONSTITUTION

A. THE TENTH AMENDMENT

As previously noted, the Oregon court's view that the operation of 38 U.S.C. 17–17j is dependent on the existence of a common law contract was heavily influenced by its belief that, if held to be self-executing, the statute would violate the Tenth Amendment to the Constitution of the United States. This controlling assumption is without merit.

1. It is now firmly established that a federal statute does not violate the Tenth Amendment if it is enacted pursuant to a power granted the federal government, under the Constitution, to accomplish a legitimate purpose, and if it adopts means necessary and appropriate to the permitted purpose, which are not prohibited by any other part of the Constitution. *E.g., McCulloch* v. *Maryland,* 4 Wheat. 316; *Martin* v. *Hunter's Lessee,* 1 Wheat. 304, 324–325; *Kentucky*

Whip & Collar Co. v. *I.C.R. Co.*, 299 U.S. 334, 352; *United States* v. *Darby*, 312 U.S. 100, 124; *Oklahoma* v. *Atkinson Co.*, 313 U.S. 508, 534; *Fernandez* v. *Wiener*, 326 U.S. 340, 362; *Case* v. *Bowles*, 327 U.S. 92, 101–102; *Oklahoma* v. *Civil Service Comm'n*, 330 U.S. 127, 142–144. As this Court stated in *Case* v. *Bowles*, *supra* (327 U.S. at 102):

> Since the decision in *McCulloch* v. *Maryland*, 4 Wheat. 316, 420, it has seldom if ever been doubted that Congress has power in order to attain a legitimate end—that is, to accomplish the full purpose of a granted authority—to use all appropriate means plainly adapted to that end, unless inconsistent with other parts of the Constitution. And we have said, that the Tenth Amendment "does not operate as a limitation upon the powers, express or implied, delegated to the national government."

Moreover, if Congress enacts legislation authorized under its granted powers and the state has a conflicting law, which would be valid but for the federal act, the Supremacy Clause of Article VI establishes the supremacy of the federal enactment. *E.g.*, *Case* v. *Bowles*, *supra*, at 102–103; *Oklahoma* v. *Atkinson Co.*, 313 U.S. 508, 534–535. Accordingly, the question presented here, as in all cases in which federal legislation is challenged on the basis of the Tenth Amendment, is not whether the means utilized by Congress to achieve a permitted end encroach upon an area of state power but whether the means are necessary and appropriate to the end sought and not in derogation of any other provision of the Constitution. If

that question is answered affirmatively, there is no Tenth Amendment violation.

2. There can be no doubt of the constitutional power of Congress to extend to veterans of the nation's armed services such benefits as hospitalization and institutionalization, and to attach proper terms and conditions to those benefits. The delegated power to provide for the common defense and to raise and maintain an army and navy (Art I, Section 8) confers authority upon Congress to provide pensions and other benefits, as a reward to those who have rendered faithful service in the armed forces of the United States and as an inducement for future service by others. *United States* v. *Hall*, 98 U.S. 343; *Royce, Inc.* v. *United States*, 126 F. Supp. 196 (Ct. Cls.); see also *Abbot* v. *Morgenthau*, 93 F. 2d 242 (C.A. D.C.), certiorari denied, 303 U.S. 638. And the power to grant pensions and other gratuitous benefits such as hospitalization carries with it the power to legislate on the whole matter of such benefits, including the imposition of various terms and conditions. See *Hines* v. *Lowrey*, 305 U.S. 85; *Frisbie* v. *United States*, 157 U.S. 160; *Abbot* v. *Morgenthau, supra; Coakley* v. *Attorney General*, 318 Mass. 508, 62 N.E. 2d 659. Consequently, if necessary and appropriate to a legitimate purpose, the means adopted by Congress in 38 U.S.C. 17–17j clearly fall within the

general constitutional authority to legislate under the military and defense powers.[23]

Similarly, the purpose to which the legislation is directed is plainly legitimate. That end is to obtain funds for the General Post Fund by means of which the government may provide for and improve the recreation and religious equipment and facilities of V.A. hospitals and domiciliaries, in which veterans are gratuitously cared for and treated—in the case of men like Warpouske, for a good part of their lives. The personalty vesting in the government under 38 U.S.C. 17–17j is solely for the benefit and use of the Post Fund, and no part of it is covered into the Treasury for general expenditures.[24]

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[23] The history of legislation in this country concerning the care of men injured while serving in the armed forces dates back to the Revolutionary War. After that war, certain of the states made provision for the dressing of the wounds of veterans, but no federal provision was made until after the establishment in 1811 of the United States Naval Home, Philadelphia, Pennsylvania. 2 Stat. 650. The federal policy after the Revolutionary War and prior to the War of 1812 was apparently to compensate or pension veterans for their disabilities rather than to administer medical or domiciliary care. History of the Medical and Domiciliary Care of Veterans, *The Military Surgeon*, Vol. 76, No. 3 (1935). See also, the preface to Title 38, United States Code Annotated, Brief History of Legislation Pertaining to Veterans' Benefits, pp. 6–31.

[24] Some of the items in hospitals and domiciliaries covered by expenditures from the General Post Fund include, *inter alia*, telephone calls for indigent patients, leasing of bowling alleys, swimming pools and golf courses, rental of transportation for off-station amusements, admissions to such amusements, hiring of entertainers and sports officials, small games and puzzles, contest prizes, holiday decorations, playroom furnishings, reading material, song and prayer books and other articles used in

3. The remaining question is whether Congress, in order to accomplish this legitimate purpose, has chosen or adopted, in the vesting provisions of 38 U.S.C. 17–17j, a means necessary and appropriate to the permitted end. The terms necessary and appropriate or, as used in Art. I, Section 8, "necessary and proper", have been given a very broad scope by this Court. In *McCulloch* v. *Maryland, supra,* Chief Justice Marshall explained that the terms were not used in the restrictive sense, meaning the most direct or simple means, but rather were flexible terms which were really synonymous with such expressions as "convenient, or useful, * * *". 4 Wheat. at 413. Many other expressions have been applied by the Court in expressing the real sense of necessary and appropriate, such as "plainly adapted" (*e.g., McCulloch, supra,* at 421), "conducive" (*Legal Tender Case,* 110 U.S. 421, 440), "eligible" (*Logan* v. *United States,* 144 U.S. 263, 283), and all means which "most advantageously effect" the permitted end (*Legal Tender Case, supra,* at 440). Another common paraphrasing of the necessary and proper clause has been whether the means employed in the federal statute are "reasonably related" or "adapted" to the permitted end. *Perez* v. *Brownell,* 356 U.S. 44, 58; *United States* v. *Darby,* 312 U.S. 100, 121.

(*a*). In determining whether the vesting mechanism utilized in 38 U.S.C. 17–17j is necessary and appropriate, or reasonably related, to the end of raising

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personal devotions, and altar and sanctuary appointments. V.A. Manual MP–4, Part 5 (Department of Medicine and Surgery Supplement, Sept. 26, 1956).

funds for specific benefits in V.A. institutions, it is important, in the first instance, to stress the significance of the relationship between the veteran and the government. It is this relationship which, when placed in the context of the receipt by a veteran of free care and treatment at V.A. hospitals and homes, constitutes the essential nexus between the purpose of, and the means employed by this statute. The relationship between the veteran and the government has been, of course, the basis for a great mass of special legislation since the first days of the Republic.[25] All sorts of pensions and other gratuities, including health and insurance benefits, bonuses, educational benefits, reemployment rights and financial advantages have been conferred by the country on the men who once bore arms on its behalf. As noted above, p. 35, *supra*, it has been consistently held that, in granting pensions or other forms of gratuitous benefits, Congress may impose such reasonable terms and conditions as it sees fit.[26]

The broad discretion possessed by Congress with regard to the conditions imposed on receipt of veterans' benefits is illustrated by the cases involving the statutory limitation on the fees of attorneys representing veterans on administrative claims. *Hines* v. *Lowrey*, 305 U.S. 85; see also, *Calhoun* v. *Massie*, 253 U.S. 170; *Margolin* v. *United States*, 269 U.S. 93. In *Hines*, for example, the statutory limitation on fees

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[25] See the preface to Title 38, United States Code Annotated, Brief History of Legislation Pertaining to Veterans' Benefits.

[26] Insofar as federal pensions are concerned, this was conceded by the court below (R 45).

amounted to ten dollars. An attorney, representing an incompetent veteran before the agency, was awarded a fee of $3,000 by a New York court, which had jurisdiction over the incompetent. The attorney, noting that the New York court had deemed this fee to be commensurate with the nature and extent of his services, urged that the state court had the paramount power to fix fees for services rendered an incompetent. This Court rejected the attorney's contentions, holding that "Congress alone is vested with constitutional power to determine the wisdom of [its] policy" with regard to conditions imposed on veterans' benefits (305 U.S. at 90), and that the valid exercise of its power was supreme over any power residing in the state court. *Id.* at 91.[37]

(*b*). In 38 U.S.C. 17–17j, Congress has provided for Post Fund expenditures, not by basing its legislation on the general relationship between the government and its residents or citizens (the relationship which underlies the state's escheat power), but rather by relying on this special relationship between the government and veterans in need of gratuitous medical care and treatment. The statute reflects the Congressional judgment that, in circumstances where a veteran patient dies leaving neither heirs nor testamentary beneficiaries, his property should be

[37] See also, *Gostovich* v. *Valore*, 153 F. Supp. 826 (W.D. Pa.), appeal dismissed, 355 U.S. 608, affirmed, 257 F. 2d 144 (C.A. 3), certiorari denied, 359 U.S. 916, where the veteran's constitutional attack, based on his contention that the ten dollar limitation in effect deprived him of the right to counsel, was rejected by the courts which deferred to the legislative judgment in this area.

devoted to providing additional comforts to other hospitalized veterans. In effect, the government has established a form of assistance for these veterans as a class—through the Post Fund—by requiring a minimal repayment (in specified circumstances) in return for its extension of gratuitous care and treatment to such veterans as a class.[28]

The reasonableness of this means of furthering the welfare of this class of veterans seems plain. On the one hand, nothing is taken from the veteran himself, no matter how long his period of hospitalization may be. Nor is anything taken from his family or from the natural objects of his testamentary bounty. On the other hand, the veteran who dies in a Veterans Administration facility has had the benefit of the activities and equipment financed by the General Post Fund—in Warpouske's case for a total of seven years. It is altogether fair that, in the absence of heirs or devisees, his estate should be utilized to give other similarly situated veterans the same benefit. And it is of some relevance that only infrequently will the estate of any particular veteran subject to the vesting provisions be substantial. As Congress was un-

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[28] The self-executing method of 38 U.S.C. 17-17j dates back to the establishment in 1851 of military asylums for the relief and support of invalid and disabled soldiers of the Army of the United States. 9 Stat. 595. That Act provided that the support of such institutions should be provided, in part, by appropriating:

"all moneys belonging to the estates of deceased soldiers, which now are, or may hereafter be unclaimed for the period of three years, subsequent to the death of said soldier or soldiers, to be repaid by the commissioners of the institution, upon the demand of the heirs or legal representatives of the deceased. * * *"

questionably aware, most patients in V.A. institutions are being treated for non-service-connected illnesses or disabilities and were therefore admitted only because of an inability to bear the costs of their medical care.[29]

The reasonableness of the Congressional plan reflected in 38 U.S.C. 17–17j is brought into still sharper focus by the fact that Congress could undeniably provide, with respect to competent and incompetent veterans alike, that the value of care and treatment by the Veterans Administration should be chargeable against the veteran's estate in all circumstances. This, indeed, is what the State of Oregon, in common with most other states, does with regard to its public hospitals and homes.[30] In the case of most veterans

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[29] See, *e.g.*, Annual Report of the Administrator of Veterans' Affairs, 1938, p. 10. It shows that since 1924 about 73% of all admissions were of the non-service-connected variety and that, in 1938, 91% of the admissions were non-service-connected disabilities. This latter figure reached 92% in 1939 and 1940. Annual Report, 1939, p. 8; 1940, p. 8.

[30] See Oregon Revised Statutes, §§ 413.200, 411.480, 428.010-(3). Exemption from the state claim is minimal since Oregon's exemption laws relate to a very limited class of property. See § 23.160 *et. seq.*

Moreover, it is interesting to note that Oregon was fully compensated for the two months Warpouske spent in the Multnomah County Hospital prior to being transferred to the Veterans Hospital (R. 6). Payment to creditors, like the state here, is provided for under 38 U.S.C. 17c, *supra*, pp. 5–6. Thus, where there are no devisees or heirs, any claim of the state for reimbursement of hospital expenses takes precedence over the claim of the General Post Fund—irrespective of the comparative duration of the veteran's confinement in state and Veterans Administration hospitals. Had the estate here been smaller, the payment to the county hospital might well have

(including Warpouske), such a provision would reduce or eliminate the possibility of inheritance by surviving relatives and even bar the possibility of an escheat. We stress again that 38 U.S.C. 17–17j manifests the Congressional intention that neither the veteran, during his lifetime, nor his survivors or devisees, upon his death, be taxed with the cost of his hospitalization and that, where there are no heirs and no testamentary disposition, other veterans in federal hospitals and homes (rather than the public treasury) will obtain the veteran's estate. Cf *National Home* v. *Wood*, 299 U.S. 211, 215. Surely, Congress' authority is not lessened because it chose to be more generous to veterans and their families than it might have been. Cf. *Ferry* v. *Ramsey*, 277 U.S. 88.[31]

(*c*). It is no answer that there may be other methods Congress might employ, either through taxing or

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exhausted its assets, and notwithstanding Warpouske's seven years in V.A. institutions the Post Fund would have received nothing.

[31] The fact that 38 U.S.C. 17–17j is the most generous disposition from the veterans' viewpoint—since it (1) does not take anything from the veteran-patient during his life and does not interfere with his control of his estate by devise or intestate succession, (2) does not affect the full taking by any heirs or devisees, and (3) disposes of the estate left (where there is no will or heir) for the sole use and benefit of other veterans—refutes the observation of the court below that the self-executing interpretation we advocate is "basically contrary to the traditional solicitude of the Government for its disabled war veterans" (R. 44). It is not the veteran who has any complaint under this statute, it is only the state; the Oregon court's concern would have been more fairly directed to the merits of the competing claims of the two governments.

asserting claims against estates,[32] to provide monies for the Post Fund. In one view, of course, the measure used here by Congress is a form of tax—restricted, out of considerations of fairness and equity, to those estates of veteran-patients dying intestate and without heirs. The significant point, in any event, is that other methods of raising funds for the Post Fund would in all probability have in the end an effect on state treasuries comparable, in cases like this, to that of 38 U.S.C. 17–17j.

Moreover, the choice of means, as long as those selected are reasonably related or necessary and appropriate to the permitted end, clearly lies with Congress. Its decision that the vesting provisions of 38 U.S.C. 17–17j were fair and reasonable in the circumstances is entitled to the greatest weight. This Court has often reiterated that a court should not substitute its judgment for that of Congress as to the means necessary and appropriate to a permitted end, but should rather defer to the legislative judgment. *E.g., Perez* v. *Brownell*, 356 U.S. 44; *Oklahoma* v. *Civil Service Comm'n*, 330 U.S. 127; *United States* v. *Darby*, 312 U. S. 100; *Northern Securities Co.* v. *United States*,

[32] Part of the framework of 38 U.S.C. 17–17j might conceivably have been used—that is, honoring of all heirs and beneficiaries and asserting only a claim for the cost of care and treatment after the heirs or beneficiaries take. However, as suggested by the method adopted by Oregon and most other states with regard to their public institutions, the cost of keeping records of expenditures for care and treatment would far exceed the possibility of recoupment after takings by heirs and beneficiaries, and hence, as a practical matter, it would only be worth while to keep records for the purpose of asserting a claim prior to the taking.

193 U.S. 197.[33] As cogently put by Chief Justice Marshall, the courts should not "deprive the legislature of the capacity to avail itself of experience, to exercise its reason, and to accommodate its legislation to circumstances." *McCulloch, supra,* at 415–416.

(*d*). It is also significant, we think, that the same method, or methods closely akin to that established in the federal Act, have been employed by a number of states maintaining old soldiers' homes for veterans.[34] While the vesting language varies from one state to another—together with differences in grants of capacity to leave by will or intestate succession, and the type of estate covered by the statute—the self-executing feature is always present. California,[35] covering only the personalty or money held by or left in the custody of the home, provides that upon death of the veteran his personalty left "shall * * * be held as a trust fund" for eligible heirs, and if unclaimed, "shall be paid to the post fund of the home * * *". Illinois,[36] also covering only personalty or money in the custody of the home, provides that, upon the death

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[33] See, also, *First National Bank* v. *Union Trust Co.*, 244 U.S. 416; *Fairbank* v. *United States*, 181 U.S. 283; *Interstate Commerce Commission* v. *Brimson*, 154 U.S. 447; *Logan* v. *United States*, 144 U.S. 263.

[34] A survey of state legislation reveals that at least the following have self-executing provisions similar to 38 U.S.C. 17–17j: California, Colorado, Idaho, Illinois, Massachusetts, North Dakota, Rhode Island, and Wisconsin.

[35] West's Ann. Calif. Codes, Military and Veterans, §§ 1035, 1035.1 (1960 Supp.). The California law, more restrictive than 38 U.S.C. 17–17j, does not permit the veteran full power to leave to anyone by will after his entry into the home.

[36] Smith-Hurd Ill. Ann. Stat., Vol. 23, §§ 3021, 3022 (1958).

of the veteran, such funds may be "expended" for the "special comfort, pleasure and amusement" of the soldiers and sailors left in the home. Among the other states, Colorado [37] covers all property "real, personal, or mixed" whether in the custody of the home or not, providing that it "shall pass" for the use and benefit of the home; Massachusetts [38] establishes that on death a veteran-member's estate "shall inure" to the home; Idaho,[39] like the federal Act, simply provides for vesting; Wisconsin,[40] covering personal property, uses the term "shall be distributed" for the benefit of the home.[41]

These states have thus singled out veterans receiving care and medical treatment in a state institution established solely for their benefit for special treatment, in that these veterans' estates are left, in the prescribed circumstances, for the sole use and benefit of the other veterans remaining in the soldiers' home. The escheat provisions which apply to citizens generally, on the other hand, redound to the benefit of the state treasury, usually for the advantage of the school

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[37] Colorado Rev. Stats. Ann., § 143–1–14 (1957 Supp.).

[38] Ann. Laws of Mass., c. 190, § 3(7) (1959 Supp.).

[39] Idaho Code Ann., Vol. 11, § 66–906 (1949).

[40] West's Wisconsin Stats. Ann., § 45.37(10) (1959 Supp.). The Wisconsin statute permits the veteran to leave the property only to legal dependents, and no will, drawn prior or subsequent to entry into the home, making a contrary disposal, is recognized as valid.

[41] The North Dakota statute (North Dak. Century Code Ann., § 37–15–17 (1960)) covers personal property in excess of $300; the Rhode Island statute (General Laws of Rhode Island, Vol. 5, § 30–24–9 (1956)) provides that all property of the deceased inmate shall "become" the property of the state for the use of the home.

fund. This special treatment by the states of such veterans is essentially founded on the same recognition of the ward status of these veterans as underlies the treatment under 38 U.S.C. 17–17j of veterans in federal institutions. By enacting such exceptions to their own escheat legislation, these states have indicated their belief that the method provided by those special laws is a fair and reasonable way of providing assistance to other veterans in these public institutions. Congress shares this belief.

4. In any conflict between the Oregon escheat law and the federal vesting statute, the state law must give way under the Supremacy Clause. Since, as we have seen, 38 U.S.C. 17–17j is based upon the special relationship between the hospitalized veteran and the government, it cannot be deemed an escheat statute. As the Supreme Court of North Dakota held in applying 38 U.S.C. 17–17j to the estate of an incompetent admittee, like Warpouske, in *In re Gonsky's Estate, supra,* 79 N.D. at 131, "[t]he rights of the United States * * * do not arise because the property escheats to the United States. No question of escheat is involved. Such rights arise not by escheat but by virtue of the relations created under the terms of the statute."

No matter how the statute is characterized, however, as long as it is a necessary and appropriate exercise of the authority granted Congress under the defense and military powers (as we have shown it to be), it is

clearly supreme under the Constitution.[42] It is no objection that the exercise of the federal power encroaches on a state power or is attended by the same incidents attending the exercise of a state power. *E.g., United States* v. *Darby*, 312 U.S. 100, 114; *United States* v. *Carolene Products Co.*, 304 U.S. 144, 147; *Kentucky Whip & Collar Co.* v. *I.C.R. Co.*, 299 U.S. 334, 346–347. This Court, in *Case* v. *Bowles supra*, declared the principle in unequivocal fashion in terms fully applicable here (327 U.S. at 102–103):

> Where, as here, Congress has enacted legislation authorized by its granted powers, and

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[42] *United States* v. *Burnison*, 339 U.S. 87, and *United States* v. *Fox*, 94 U.S. 315, the latter relied on by the court below, do not support the view that 38 U.S.C. 17–17j, as interpreted by the government, violates the Tenth Amendment. In *Burnison*, a state statute prohibited testamentary gifts of personalty to the United States; in *Fox*, the same was true of devises of real property. In each decision, the Court declared, in view of these statutes, that the attempt by a citizen of the state to leave property to the United States was invalid since the state law was controlling.

These decisions are clearly distinguishable. In the first place they both concern the state's power over the testamentary devolution of property by its citizens, not the right of the state to escheat. More important is the fact that neither *Burnison* nor *Fox* involved any federal legislation of any kind and thus did not present the Tenth Amendment issue posed here. The Court in those cases was merely holding that the state ordinarily has the power to control the testamentary disposition of its citizens, not that the state's power would be supreme over a federal act, such as 38 U.S.C. 17–17j, under which in extremely limited situations the estate of a veteran who has received gratuitous hospital care vests in the United States for the benefit of other hospitalized veterans.

Mager v. *Grima*, 8 How. 490; *Pennoyer* v. *Neff*, 95 U.S. 714; and *United States* v. *Perkins*, 163 U.S. 625, also relied on by the court below, are similarly inapposite.

where at the same time, a State has a conflicting law which but for the congressional Act would be valid, the Constitution marks the course for courts to follow. Article VI provides that "the Constitution and the Laws of the United States * * * made in pursuance thereof * * *. shall be the supreme law of the land * * *".

B. THE FIFTH AMENDMENT

The Oregon Supreme Court also expressed concern that 38 U.S.C. 17–17j, if self-executing, would violate the Fifth Amendment. As in the case of the Tenth Amendment, there is no justification for this concern.

1. We do not understand the Oregon court's interest in a possible violation of the Fifth Amendment to involve any right of the state. Nowhere in its opinion is there any suggestion that a state's right of escheat is within the ambit of the Fifth Amendment, and we submit that it obviously is not. At best, it is doubtful that a state can be regarded as a "person" within the meaning of the Fifth Amendment. Cf. *United States* v. *Burnison*, 339 U.S. 87, 95. In any event, since an individual's right of succession to property is not protected by any provision in the Constitution (*Irving Trust Co.* v. *Day*, 314 U.S. 556, 562), it would appear to follow *a fortiori* that a state's right of escheat is not guaranteed by the Fifth Amendment.

2. a. Nor does 38 U.S.C. 17–17j, if applied in accordance with its plain terms, interfere in any way with the veteran's rights under the Fifth Amendment. We emphasize again that the operative pro-

visions of the statute do not come into play unless and until the veteran dies, while receiving care and treatment, without having made a testamentary disposition of his property and without leaving relatives entitled to inherit under the state law of intestate succession. In those circumstances, the veteran's property rights no longer exist, and the sole alternative to the vesting of his personalty in the United States is an escheat to the state. Consequently, with regard to the veteran, 38 U.S.C. 17–17j works no deprivation of property within the meaning of the Fifth Amendment.

b. Even assuming such a deprivation *arguendo*, the Oregon court's belief that there would be a violation of the incompetent veteran's Fifth Amendment rights is plainly erroneous. For the reasons we have given, *supra*, pp. 37–46, the Congressional choice to use the unclaimed personalty for the benefit of the Post Fund is undoubtedly reasonable, particularly in the light of the benefits accorded the veteran by free hospitalization and care. The federal statute would no more violate the Due Process Clause than do the comparable state statutes we have discussed above (*supra*, pp. 28, 44–45), or state legislation providing for the escheat of property left by intestate residents leaving no heirs.

The contrary view of the Oregon court was based on its assumption that 38 U.S.C. 17–17j requires actual capacity to contract on the part of the admittee to a V.A. institution. On that premise, the court was of the view that the necessary contract could not constitutionally be supplied, in the case of an in-

competent lacking such capacity, by the conclusive presumption provision of 38 U.S.C. 17a, *supra*, pp. 4–5. Hence, the court concluded that Congress did not intend this provision to apply except in the case of a competent admittee (R. 38–44). Since this view stems directly from the court's misapprehension of the meaning of 38 U.S.C. 17–17j, it must fall with the court's erroneous interpretation of the statute. As we have discussed at length, *supra*, pp. 18–33, the statute does not require any actual contract; rather, it provides for the vesting of the property in the United States for the benefit of the Post Fund. The "conclusive presumption" provision does no more than declare and embody the self-executing feature of the statute. It does not, as the court below believed, presume a need for capacity to contract on the part of the admitted veteran. Consequently, application of the "conclusive presumption" provision, amounting to no more than a restatement of the earlier vesting provision, involves no Fifth Amendment problem.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment below should be reversed.

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In the Supreme Court of the United States

OCTOBER TERM 1960

No. 329

THE UNITED STATES OF AMERICA, as Trustee for the sole use and benefit of the General Post Fund, Petitioner,

v.

THE STATE OF OREGON, acting by and through the State Land Board, Respondent

In the Matter of the Estate of Adam B. Warpouske, Deceased; Portland Trust and Savings Bank, Administrator of the Estate of Adam B. Warpouske, Deceased.

On Writ of Certiorari to the Supreme Court of the State of Oregon

BRIEF FOR RESPONDENT STATE OF OREGON acting by and through the State Land Board

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In the Supreme Court of the United States

OCTOBER TERM 1960

No. 329

THE UNITED STATES OF AMERICA, as Trustee for the sole use and benefit of the General Post Fund, Petitioner,

v.

THE STATE OF OREGON, acting by and through the State Land Board, Respondent

In the Matter of the Estate of Adam B. Warpouske, Deceased; Portland Trust and Savings Bank, Administrator of the Estate of Adam B. Warpouske, Deceased.

On Writ of Certiorari to the Supreme Court of the State of Oregon

BRIEF FOR RESPONDENT STATE OF OREGON acting by and through the State Land Board

QUESTIONS PRESENTED

The essence of the questions presented in this case is simply this:

Are the provisions of 38 U.S.C. (1952 Ed.) 17-17j founded upon contract or are they self-executing, serving automatically to vest in the United States the personal property of a veteran dying intestate and without heirs in a Veterans' facility?

STATEMENT

The facts of this case are unique and marked by a series of unusual circumstances.

Warpouske was a veteran of World War I and lived in a rooming house in Portland, Oregon. On December 31, 1955, he suffered a hip fracture and a cerebral hemorrhage rendering him unconscious (R. 6, 31). He was taken to a hospital and, five days later, when it appeared that he was without funds, he was transferred to the Multnomah County hospital in Portland for treatment at county expense (R. 7-35). He remained there until March 1, 1956, when he was transferred to the Veterans' Administration hospital in Portland where he died on March 19, 1956, intestate and without heirs (R. 7, 31). From the time he was stricken until his death he was unconscious or at best semi-conscious (R. 31, 36). The Veterans' Administration records show that upon his admission he was very weak, disoriented and unable to speak, and that there was no improvement or clearing of his sensorium (R. 79).

Shortly after his removal to the Veterans' hospital, and a few days before he died, it was learned that he had fallen heir to the estate of his deceased brother in Wisconsin, having a net value of approximately $12,755.67 (R. 4, 28). He was never aware of his inheritance. On March 9, 1956, the Portland Trust and Savings Bank was appointed guardian of Warpouske's estate to receive this inheritance (R. 12). No guardian of Warpouske's person was ever appointed. No commit-

ment order of a court provided for his transfer or confinement to the Veterans' hospital.

In addition to his mental condition ranging between being comatose or semi-comatose from the time he suffered the stroke until his death, the Veterans' Administration files show that Warpouske had a long history of mental illness and mental deficiency. His mental condition was diagnosed as dementia praecox. Other Veterans' Administration reports classified him as a moron, psychotic or insane (R. 55-80).

When Warpouske died the Veterans' Administration claimed his estate under the provisions of 38 U.S.C. (1952 Ed.) 17-17j, by reason of the fact that he died in a veterans' facility, intestate and without heirs. On the other hand, the State of Oregon claimed his estate on the ground that 38 U.S.C. 17-17j was based upon contract, that Warpouske was mentally incompetent to contract, that no valid contract arose and that therefore his estate escheated to the State of Oregon under the provisions of Oregon Revised Statutes 120.010[1] for the benefit of the Common School Fund (R. 11-12).

Part of the assets in Warpouske's estate consisted of his unexpended federal pension funds in a net amount of $971.47 (R. 28). No contest existed as to these funds inasmuch as the state, upon learning of their source, immediately relinquished all claim to them, recognizing that they were subject to reversion to the federal government under the provisions of 38 U.S.C. (1952 Ed.) § 450[2], and that their reversion was not a matter of contract

but a vesting of a contingent reversionary interest retained by the federal government in the granting of a pension to a pensioner.

The trial court found that Warpouske was mentally incompetent to contract, that no valid contract had been effected under the provisions of 38 U.S.C. 17-17j and that, except for the unexpended pension funds, the decedent's estate escheated to the state for the benefit of the Common School Fund (R. 22-25). The Oregon Supreme Court affirmed the trial court and held that the federal act was not operative when applied to the estate of Adam B. Warpouske (R. 49).

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① ORS 120.010 provides:

"Immediately upon the death of any person who dies intestate without heirs, leaving any real, personal or mixed property, interest or estate in this state, the same escheats to and vests in the state, subject only to the claims of the creditors and as provided in ORS 120.060 to 120.130; and the clear proceeds derived therefrom shall be paid into and become a part of the Common School Fund of this state and be loaned or invested by the State Land Board, as provided by law."

② 38 U.S.C. (1952 Ed.) § 450 provided in pertinent part:

"*Payments to minors, mental incompetents, or persons under legal disability.*

"(1) Where any payment of compensation, adjusted compensation, pension, emergency officers' retirement pay, or insurance under any Act administered by the Veterans' Administration is to be made to a minor, other than a person in the military or naval forces of the United States, or to a person mentally incompetent, or under other legal disability adjudged by a court of competent jurisdiction, such payment may be made to the person who is constituted guardian, curator, or conservator by the laws of the State

of residence of claimant, or is otherwise legally vested with the care of the claimant or his estate: *Provided*, That where in the opinion of the Administrator any guardian, curator, conservator, or other person is acting as fiduciary in such a number of cases as to make it impracticable to conserve properly the estates or to supervise the persons of the wards, the Administrator is authorized to refuse to make future payments in such cases as he may deem proper: *Provided, further*, That prior to receipt of notice by the Veterans' Administration that any such person is under such other legal disability adjudged by some court of competent jurisdiction, payment may be made to such person direct: *Provided further*, That where no guardian, curator, or conservator of the person under a legal disability has been appointed under the laws of the State of residence of the claimant, the Administrator shall determine the person who is otherwise legally vested with the care of the claimant or his estate.

* * *

"(3) All or any part of the compensation, pension, emergency officers' retirement pay, or insurance the payment of which is suspended or withheld under this section may, in the discretion of the Administrator, be paid temporarily to the person having custody and control of the incompetent or minor beneficiary, to be used solely for the benefit of such beneficiary, or in the case of an incompetent veteran, may be apportioned to the dependent or dependents, if any, of such veteran. Any part not so paid and any funds of a mentally incompetent or insane veteran not paid to the chief officer of the institution in which such veteran is an inmate nor apportioned to his dependent or dependents may be ordered held in the Treasury to the credit of such beneficiary. All funds so held shall be disbursed under the order and in the discretion of the Administrator for the benefit of such beneficiary or his dependents. Any balance remaining in such fund to the credit of any beneficiary may be paid to him if he recovers and is found competent, or, if a minor, attains majority, or otherwise to his guardian, curator, or conservator, or, in the event of his death, to his personal representative, except as otherwise

provided by law: *Provided*, That payment will not be made to his personal representative if, under the law of the State of his last legal residence, his estate would escheat to the State: *Provided further*, That any funds in the hands of a guardian, curator, conservator, or person legally vested with the care of the beneficiary or his estate, derived from compensation, automatic or term insurance, emergency officers' retirement pay, or pension, payable under said Acts, which under the law of the State wherein the beneficiary had his last legal residence would escheat to the State, shall escheat to the United States and shall be returned by such guardian, curator, conservator, or person legally vested with the care of the beneficiary or his estate, or by the personal representative of the deceased beneficiary, less legal expenses of any administration necessary to determine that an escheat is in order, to the Veterans' Administration, and shall be deposited to the credit of the current appropriations provided for payment of compensation, insurance, or pension.

SUMMARY OF ARGUMENT

I

The fact that 38 U.S.C. (1952 Ed.) 17-17j operates contractually is evidenced (1) by the language of the statute, (2) by the legislative history of its enactment, (3) by the great majority of the cases applying the statute, and (4) by the administrative practice.

The language of the statute is phrased in terms of contract, and the acceptance of treatment by a veteran constitutes an acceptance of the conditions of the subchapter giving rise to the legal consequences provided in the statute. Being contractual in nature, the Act necessarily presupposes a mentally competent veteran legally capable of contracting and accepting the conditions of the subchapter if his estate is to become subject to the provisions of the Act and to vest in the United States upon his death intestate and without heirs in the Veterans' facility.

The legislative history of the enactment of 38 U.S.C. 17-17j dispels any lingering doubt as to the contractual nature of the statute and clearly shows that it does not apply to a mentally incompetent veteran legally incapable of entering into an agreement. In the debate on the floor of the House, the chairman of the committee sponsoring the bill[9] clearly and explicitly pointed out that the agreement of an insane veteran "would not amount to anything" and that the legislation "does not apply" to a physically incompetent veteran who was un-

[9] See 87 Congressional Record, 227,3811.

able to agree to anything (87 Congr. Rec. 5202-5204, covering H.R. 4692, 38 U.S.C. 17-17j).

The great majority of cases in both federal and state courts bear out and amply illustrate that the rights of the United States arising under 38 U.S.C. (1952 Ed.) 17-17j are a matter of contract and not a matter of automatic vesting by reason of the self-executing operation of the statute.

Administrative practice, in conformity with the statute, likewise bears out the contractual nature of the statute by incorporating into the veterans' application for admission to the veterans' facility an agreement or acknowledgment of the conditions and provisions of the statute.

II

In view of the clear and unmistakable legislative intent that the statute operates contractually and does not apply to an insane veteran or a physically incompetent veteran unable to agree to anything, petitioner's second question as to the power of Congress to provide for the self-executing operation of the statute in relation to the Fifth and Tenth Amendments becomes moot and hypothetical. As a rule this Court does not pass upon constitutionality when presented by a hypothetical question or situation. Nevertheless, the power to legislate concerning probate and the succession to property of decedents has traditionally been recognized as a power reserved to the states by the Tenth Amendment. Because of the contractual nature of the statute, no Fifth

Amendment problem may be involved inasmuch as the "conclusive presumption" provision of the statute does not become operative as to mentally incompetent or incapacitated veterans unable to contract.

ARGUMENT

I

The statute, 38 U.S.C. (1952 Ed.) 17-17j, is not one of escheat or the control of who shall receive a decedent's property, but one providing for contract. No valid contract can be effected by a mentally incompetent person, and, therefore, no valid contract arose under the statute with respect to this mentally incompetent veteran.

That 38 U.S.C. (1952 Ed.) 17-17j is founded upon contract is evidenced by the following:

(1) The language of the statute is couched in terms of contract; (2) the legislative history of the enactment of the bill recognizes the contractual nature of the legislation; (3) a practically unanimous line of judicial decisions in both federal and state courts has held the statute to be founded upon contract or as creating a contractual relationship; and (4) the administrative practice of the Veterans' Administration, in conformity with the statute, has accorded it a contractual operation.

(1) *Language of the Statute.* In pertinent part 38 U.S.C. (1952 Ed.) 17-17j, Act of June 25, 1910, 36 Stat. 736, as amended by the Act of December 26, 1941, 55 Stat. 868 (as it appeared in the U. S. Code) provided:

"§ 17. *Vesting of undisposed personalty in United States as trustee for General Post Fund.*

"Effective ninety days after December 26, 1941, whenever any veteran (admitted as a veteran) shall die while a member or patient in any facility, or any hospital while being furnished care or treatment therein by the Veterans' Administration, and shall not leave surviving him any spouse, next of kin, or heirs entitled, under the laws of his domicile, to his personal property as to which he dies intestate, all such property, including money and choses in action, owned by said decedent at the time of death and not disposed of by will or otherwise, shall immediately vest in and become the property of the United States as trustee for the sole use and benefit of the General Post Fund, a trust fund prescribed by section 725s (b)(45) of Title 31.

"The foregoing provisions are conditions precedent to the initial, and also to the further furnishing of care or treatment by the Veterans' Administration in a facility or hospital. *The acceptance of care or treatment* by any veteran admitted as such to any Veterans' Administration facility or hospital after ninety days from December 26, 1941, and *as well the continued acceptance of care or treatment* furnished by the Veterans' Administration after said ninety days by any veteran who is then receiving the same *shall constitute an acceptance of the provisions and conditions of this subchapter and have the effect of an assignment, effective at his death, of such assets in accordance with and subject to the terms and provisions of this subchapter and the regulations issued in accordance with and pursuant thereto.* (Emphasis supplied)

"§ 17a. *Presumption from death in facility of contract for disposition of property.*

"The fact of death of the veteran (admitted as such) in a facility or hospital, while being furnished

care or treatment therein by the Veterans' Administration, leaving no spouse, next of kin, or heirs, shall give rise to a conclusive presumption of a *valid contract for the disposition in accordance with this subchapter, but subject to its conditions*, of all property described in section 17 of this title owned by said decedent at death and as to which he dies intestate. (Emphasis supplied)

* * *

"§ 17c. *Disbursements from Fund; payment of creditors.*

"Disbursements from the General Post Fund shall be made by the Division of Disbursements, Treasury Department, upon the order and within the discretion of the Administrator of Veterans' Affairs for the benefit of members and patients while being supplied care or treatment by the Veterans' Administration in any facility or hospital, and this authority is not limited to facilities or hospitals under direct administrative control of the Veterans' Administration: *Provided, however*, That there shall be paid out of the assets of the decedent so far as may be the valid claims of creditors against his estate that would be legally payable therefrom in the absence of this subchapter and without the benefit of any exemption statute, and which may be presented to the Veterans' Administration within one year from the date of death, or within the time, to the person, and in the manner required or permitted by the law of the State wherein administration, if any, is had upon the estate of the deceased veteran; and also the proper expenses and costs of administration, if any: *And provided further*, That if the decedent's estate be insolvent the distribution to creditors shall be in accordance with the laws of his domicile, and the preferences and priorities prescribed thereby shall govern, subject to any applicable law of the United States.

"§ 17d. *Disposition of remainder of assets; acquisition of assets by the Administrator of Veterans' Affairs.*

"The remainder of such assets or their proceeds shall become assets of the United States as trustee for said Post Fund and disposed of in accordance with this subchapter. If there be administration upon the decedent's estate such assets, other than money, upon claim thereof within the time required by law, shall be by the administrator of the estate delivered to the Administrator of Veterans' Affairs or his authorized representative, as upon final distribution; and upon the same claim there shall be paid to the Treasurer of the United States for credit to said Post Fund any such money available for final distribution. In the absence of administration, any money, chose in action, or other property of the deceased veteran held by any person shall be paid or transferred to the Administrator of Veterans' Affairs upon demand by him or his duly authorized representative, who shall deliver itemized receipt therefor. Such payment or transfer shall constitute a complete acquittance of the transferor with respect to any claims by any administrator, creditor, or next of kin of such decedent.

* * * *

"§ 17g. *Notice to veterans of law.*

"The Administrator of Veterans' Affairs *shall prescribe a form of application for hospital treatment* and domiciliary care which *shall include notice of the provisions of this subchapter.* Within ninety days after approval hereof similar *notice shall be given to each veteran then receiving care in any facility or hospital* as described in this subchapter: *Provided, however,* That this requirement shall be met by *posting of said notice with a copy of the prescribed form in a prominent place* in each building wherein patients or members are housed." (Emphasis supplied)

* * *

An examination of this statute discloses that the vesting of personalty of such veteran is intended to be founded upon contract. The statute is couched in the language of the contract. Section 17 speaks of the "acceptance" of treatment as the "acceptance" of the provisions and conditions of the subchapter. Section 17g directs the Administrator of Veterans' Affairs to provide a form of application for hospital treatment which shall include notice of the provisions of the subchapter (Subchapter II, comprising §§ 17-17j), and further provides, as to veterans already in a veterans' hospital or facility, for posting of notice of the provisions of the statute in the building where the veterans are housed. The obvious purpose of these provisions is to lay the foundation for contract which may be accepted by veterans entering the hospital by the execution of the application for admission, or, as to patients already in a hospital, by remaining and accepting further treatment.

Section 17a further bears out the contract intention of the statute. This section provides for a presumption of "contract" arising out of the fact of death of a veteran receiving treatment in a veterans' hospital, subject to the "conditions" of the subchapter. Since the creation of the presumption is subject to the conditions of the subchapter, this section must be read together with the other provisions of the subchapter and in relation to the law of contract generally. A valid contract can arise only where a person is legally capable of contracting, and the presumption of contract under this section must

necessarily presuppose a person legally competent to contract.

Just as under the Oregon Revised Statutes, 41.350 (3), relating to conclusive presumptions, the recitals in a written instrument between the parties thereto are conclusive, nonetheless it may be shown that one of the parties was mentally incompetent.[©] A deed, contract or will by a mentally incompetent person is regarded as void and without legal effect. *Dexter v. Hall*, 82 U.S. 20, 21 L. Ed. 73, 77; *Beach v. United States*, 226 U.S. 243, 57 L. Ed. 205; *German Savings & Loan Society v. De Lashmutt*, 67 F. 399 (C.C., D. Or. 1895). The conclusiveness of recitals in the writing fails with the want of mental capacity of the person executing the writing.

Again, there is a question whether a legislative attempt to make a rule of conclusive evidence compulsory upon the judiciary, in an area where it would normally be the duty of the court to examine the evidence, may not be regarded as an attempt to infringe upon the exclusive province of the judiciary. IV Wigmore on Evidence, § 1353, p. 716.

Moreover, the provisions of 38 U.S.C. § 17 use this language:

"* * * The *acceptance of care or treatment*

[©] ORS 41.350 (3) provides:

"The following presumptions, and no others, are conclusive:

"(3) The truth of the facts recited from the recital in a written instrument, between the parties thereto, their representatives or successors in interest by a subsequent title; and this rule does not apply to the recital of a consideration."

by any veteran admitted as such to any Veterans' Administration facility or hospital after ninety days from December 26, 1941, and as well the continued acceptance of care or treatment furnished by the Veterans' Administration after said ninety days by any veteran who is then receiving the same *shall constitute an acceptance of the provisions and conditions of this subchapter* and have the effect of an assignment, effective at his death, of such assets in accordance with and subject to the terms and provisions of this subchapter and the regulations issued in accordance with and pursuant thereto." (Emphasis supplied)

From this provision it appears that it is the "acceptance of care" which constitutes "an acceptance of the provisions and conditions of this subchapter." Accordingly, it is clear that the mental competency of the veteran and his capacity to accept treatment *are* prerequisites to the acceptance of the provisions of the subchapter which in turn give rise to the conclusive presumption of contract.

(2) *Legislative history.* The primary objective in all statutory construction is the determination of legislative intent. In the case at bar the court need not resolve the meaning of the statute without the aid of a reliable extrinsic guide but may turn to the legislative history of the Act in the determination of its legislative intent. Here the history of the enactment of the bill provides a detailed and explicit account of the debate in Congress, with answers by the chairman of the committee sponsoring the bill concerning its intent, purpose and application.

The precise question here presented to this Court—

whether the statute applies to a mentally incompetent veteran—was specifically answered by Congressman Rankin, the chairman of the sponsoring committee. He clearly pointed out there "cannot possibly be any conflict" [between the federal law and state escheat laws] "because the veteran agrees to this arrangement when he enters the hospital" and that if the veteran were insane his "agreement would not amount to anything." Again, when asked if the legislation would apply to a physically incompetent veteran who might be picked up and was unable to agree to anything when he entered the hospital, Mr. Rankin replied: "If he does not agree, then this does not apply."

In order to give the debate its setting in context and to show the purpose of the bill and the understanding of the members of Congress, we quote in pertinent part at length from 87 Congr. Rec. 5202-5204, covering 38 U.S.C. 17-17j (H.R. 4692):

> "Mr. RANKIN of Mississippi. Mr. Speaker, when this measure was before the Veterans' Affairs Committee we have the Administrator of Veterans' Affairs before us. *The bill involves only personal property of veterans who die in Veterans' facilities who have no living relatives whatsoever, who die intestate.* A great many of them leave small amounts of personal property that the Veterans' Administration does not know what to do with. There is no objection to it from any veterans' organization. (Emphasis supplied)
>
> * * *
>
> "Mr. VAN ZANDT. The practice has been in vogue for many years, as far as soldiers' homes are concerned, and if this bill is enacted into law, the

veteran when making application for hospitalization will simply agree to the disposition of his property in case of death and leaves no relatives.

"Mr. RANKIN of Mississippi. The only possible conflict that could arise would be between the State and the Federal Government on the grounds that what little he leaves would escheat to the State, but it would probably cost the State more to handle it than it would be worth, nine times out of ten if not ninety-nine times out of a hundred.

* * *

"Mr. WILLIAM T. PHEIFFER. The bill was before the committee and was gone into quite thoroughly. A great deal is to be said in favor of the bill and I quite agree that something of that sort should take care of the cases the gentlemen mentions. *However, looking at it legalistically, there is a chance of there being a serious conflict in some cases between the State laws and the Federal laws. In practically every State, the property would naturally escheat to the State, where a deceased person dies intestate.*

"Mr. RANKIN of Mississippi. Let me say to the gentleman from New York that *there cannot possibly be any conflict, because the veteran agrees to this arrangement when he enters the hospital. The only exception would be where the veteran is insane. His agreement would not amount to anything in that instance.*

"Mr. WILLIAM T. PHEIFFER. There might be a *case where the veteran is picked up in an incompetent condition, not mentally, but physically, and he had been unable to agree to anything when he entered the hospital.*

"Mr. RANKIN of Mississippi. *If he does not agree, then this does not apply.* But this will take a great deal of grief off of the Veterans' Administration and help dispose of a lot of virtually worthless property that these veterans are leaving in the various hos-

pitals where they pass away. I think if you would take a vote of the veterans of the United States they would practically all agree that this measure should be passed. (Emphasis supplied)

* * *

"Mr. ROBSION of Kentucky. I assume that there are a lot of old suitcases and trunks and other personal property, junk, that has accumulated in great quantities and is taking up space in the veterans' facilities?

"Mr. RANKIN of Mississippi. And there is nobody to receive it except the State, because this *applies only to veterans who have no relatives and who have made no will.* Shall we call on each State to send and get all these old trunks and old suitcases and things like that, merely because in one case out of a hundred there might be a few dollars' worth of property? (Emphasis supplied)

"Mr. ROBSION of Kentucky. And this bill will relieve that situation?

"Mr. RANKIN of Mississippi. This bill will relieve that situation.

* * *

"Mr. ELSTON. Is there anything that might be construed to dispense with the administration of an estate and the payment of taxes?

"Mr. RANKIN of Mississippi. *No; I do not think so, where a veteran makes this agreement when he enters the hospital.* If he has much of an estate, he will not go to the hospital, he will take care of himself. *But where he goes to the hospital and signs this agreement, of course, when he dies his property is disposed of in the way provided in this bill.*" (Emphasis supplied)

This discussion leaves no doubt that the statute was intended to be contractual in operation and that a vet-

eran must be competent and consensually able to agree if the statute were to be applicable to him and his estate. Nothing appears in the legislative history that any member of Congress opposed or disagreed with the views expressed in this debate. The bill was passed without opposition or amendment. See, 87 Congressional Record 3811, 4347, 5850, 5851, 5923, 9706, 9771, 9884, 9886, 9947 and 10130, covering the bill from its introduction to signature by the President.

The general rules as to legislative history in statutory construction are summed up in 2 Sutherland, Statutory Construction, §§ 5011 and 5012. Concerning the statements of a committee in charge of a bill, it is said (p. 503-504):

> "Courts have taken a realistic view of legislative procedure and have excepted from the general rule excluding the use of statements in debate of individual legislators as to the meaning of the bill, the statements of the member of the committee in charge of the bill. His remarks upon presenting the bill to the house and the answers made by him to questions asked by members will be considered by the courts in construing provisions of the bill subsequently enacted into law. These statements are in the nature of supplemental committee reports and are entitled to the same weight accorded formal committee reports."

The rule of accepting as an authoritative guide the unopposed remarks of the sponsoring committeeman and his answers and explanation to the members of Congress or the Legislature is one that has been accorded virtually unanimous approval. This Court has had frequent occasion to resort to legislative history in determining legis-

lative intent and has applied the rule in the recent cases of *Mitchell v. Kentucky Finance Co., Inc.*, (1959) 359 U.S. 290, 294, 3 L. Ed. (2d) 815, 819, 79 S. Ct. 756; *Flora v. United States*, (1958) 357 U.S. 63, 65, 2 L. Ed. (2d) 1165, 1167, 78 S. Ct. 1079; *National Labor Relations Board v. Lion Oil Company*, (1956) 352 U.S. 282, 292, 1 L. Ed. (2d) 331, 339, 77 S. Ct. 330.

From the legislative history of the Act, it is very clear that the federal act is not operative when applied to the estate of a deceased incompetent veteran as in this case.

(3) *Judicial decisions holding the statute founded upon contract.* The decided cases in both federal and state courts bear out and amply illustrate that the rights of the United States arising under 38 U.S.C. (1952 Ed.) 17-17j are founded upon contract and that the personal property of a veteran dying intestate and without heirs in a veterans' facility is not a matter of escheat, or automatic vesting in the federal government as contended by petitioner.

In the case of *Re Witte's Estate*, 174 Kan. 300, 255 P. (2d) 1039, 1044, the federal government's own argument was to that effect as follows:

> "Its [United States'] principal argument however is that the statute is not one of escheat or of the control of who shall receive a decedent's estate, but *one providing for a contract, and that it bases its claim on a contract* authorized by and executed under the statute. In support it relies principally on United States v. Stevens, 302 U.S. 623, 58 S. Ct. 388, 82 L. Ed. 484. * * *" (Emphasis supplied)

The case of *United States v. Stevens*, 302 U.S. 623, 82 L. Ed. 484, 487, 488, relied upon in the Witte case, likewise illustrates that the claim of the United States under the statute was one of contract:

> "There is no ambiguity in the contract or in the Act which authorized it. * * * (p. 487)
>
> "The *contract*, however, is valid under the applicable state law. * * * (p. 488)
>
> "The claim of the Government *is based on a contract* between the veteran and the Home. * * * *Both parties were competent to make the contract.* This contract is valid and enforceable * * *" (p. 488) (Emphasis supplied)

Again, in *United States v. Security-First National Bank of Los Angeles*, (Cal. 1955) 130 F. Sup. 521, 522, it appears that the government rested its claim upon contract:

> "* * * The Government claims that on the death of Morris, it became the owner of this deposit *by virtue of a contract between the deceased and the Veterans Administration* * * *." (Emphasis supplied)

The veteran in the foregoing case, upon admission to the Veterans' Administration hospital, had executed an application for hospital care which carried a footnote reference to 38 U.S.C. 17-17j, stating in effect that the application was made with notice of the provisions of the statute. The court questioned the effectiveness of the footnote, saying:

> "No party has challenged the validity of this agreement on the ground that there was no agree-

ment as to the footnoted matter, and although a footnote to an application for admission to a hospital is not an exemplary way to establish privity of contract, in the absence of challenge, it is sufficient. Considering that applicants for domiciliary care in a hospital are usually sick and often lacking acute mental perception, the force of a footnote to the entry application (the footnote purporting to create a special contract of unusual character) might be considerably diminished, and frequently destroyed by a careful inquiry into the circumstances of the execution of the application for domiciliary care. * * *" (p. 522)

In view of the circumstances of Warpouske's hospitalization, the comments on the foregoing case are particularly pertinent.

That the rights of the United States arising under 38 U. S. C. 17-17j are founded upon contract has been repeatedly recognized, as is illustrated by the following further cases: *Mauck v. United States*, 94 F. (2d) 745; *O'Connell v. United States*, 37 F. Sup. 832; *In re McGhee's Estate*, 268 N.Y.S. 79; *United States v. Brown*, 110 F. Sup. 370; *United States v. Gallagher*, 97 F. Sup. 1014; *United States v. Essex Trust Co.*, 44 F. Sup. 476; *Abbott v. Morgenthau*, 93 F. (2d) 242; *United States v. Peoples' National Bank of Chicago*, 121 F. Sup. 331; *United States v. Mid City National Bank*, 121 F. Sup. 402.

An important distinction, however, must be observed between the cases cited and the case at bar, and that is that in the case at bar the decedent not only at the time of his admission to the Veterans' hospital at Portland,

in March 1956, but for many years in the past was mentally incompetent and incapable of contracting.

Among the cases cited by the United States for the self-executing operation of the statute are: *In re Skriziszouski's Estate*, 382 Pa. 634, 116 A. (2d) 841; *In re Gonsky's Estate*, 79 N. D. 123, 55 N.W. (2d) 60; *In re Bonner's Estate*, 192 Misc. 753, 80 N.Y.S. (2d) 122 (Sur. Ct., Queens County).

Before a discussion of these cases, a look at the source of Warpouske's estate is important. His estate consisted primarily of funds derived from the estate of his deceased brother in a net amount of $12,755.67 (R. 4, 28). The balance of the estate, except for personal property of a value of $28, was made up of unexpended federal veterans' pension funds of a net value of $971.47 (R. 28).

Upon learning that a portion of the estate was derived from unused pension benefits, the state immediately relinquished all claim to the pension money, recognizing that such funds were subject to reversion to the federal government under the provisions of 38 U.S.C. (1952 Ed.) § 450, and that their reversion was not a matter of contract but the revesting of a contingent reversionary interest retained by the federal government in the grant of the pension to the pensioner.

The reversion of pension funds is discussed in *In re Lindquist's Estate*, 25 Cal. (2d) 697, 144 P. (2d) 438, and 154 P. (2d) 879, which points out that a pension is not an outright gift and that the term "escheat" used in 38 U.S.C. § 450 is employed in the sense of reversion and

not in its technical sense. The position of the federal government was stated as follows (144 P. (2d) 438, 440):

> "* * * It is admitted that the federal government has no power to pass laws regulating succession to property by citizens of the states, that being a power reserved by the Tenth Amendment to the states.
>
> "The appellant contends that the word 'escheat' as used in the statute does not have the technical, limited meaning urged by the respondents; that when the statute is read as a whole it has a broader meaning; that the obvious purpose, intent and meaning of the statute is that the federal government has not made the gift of a pension absolute and complete, but has retained in itself a contingent reversionary interest—that is, if the pensioner die possessed of any portion of the gift, and if he has not by will disposed of the interest, and if under the laws of the state the gift would otherwise escheat to the state, then the reversionary contingent interest of the federal government will vest."

We recognize that pensions are gratuities which Congress may grant, condition or withhold and that the reversionary interest retained by the federal government is a qualification upon the pension grant.

Among the cases cited by petitioner for the proposition that 38 U.S.C. 17-17j is self-executing is *In re Bonner's Estate*, (1948) 80 N.Y.S. (2d) 122. This effect attributed to the statute in the Bonner case is based largely upon authority of *Abbott v. Morgenthau*, (C.A., D.C. 1937) 93 F. (2d) 242. But a reading of the Abbott case discloses that the decision in the Bonner case rests more upon judicial fiat and misapprehension of the Abbott

case than upon the basis of that decision or sound principles of law.

The single question in the Abbott case was whether accumulated pension moneys credited to an insane pensioner admitted to a soldiers' home after passage of the 1902 Act, predecessor of 38 U.S.C. § 450, but prior to the 1910 predecessor of 38 U.S.C. 17-17j, were payable to the Post Fund. The court held the 1902 Act governed the pension funds and expressly recognized that the 1910 Act was based upon contract (93 F. (2d) at 244):

> "* * * Congress confined the terms of the new act [1910] expressly to those applicants thereafter admitted to the home, making their subsequent admission a binding *contract* between the home and themselves with relation to the disposition of all personal property belonging to them at death without heirs at law and intestate. And the 1910 act itself recognized that to accomplish this result the application form had to be changed to *incorporate in it the contract* of the parties. * * *" (Emphasis supplied)

Any implication that the 1902 Pension Act automatically created a contract by the mere presence of the pensioner in the home is vigorously assailed in the dissent which points out that an insane person cannot be legally bound either by his own or his guardian's act without authority of the court.

Nor did the McGhee case, 149 Misc. 713, 268 N.Y.S. 79, affirmed 239 App. Div. 763, 264 N.Y.S. 903, affirmed 262 N.Y. 686, 188 N.E. 124, support the sweeping statement in the Bonner case. In the McGhee case the veteran had signed an agreement.

In *Gonsky's Estate*, (1952) 79 N. D. 123, 55 N.W. (2d) 60, cited by petitioner, the decendent's entire estate consisted of federal retirement disability payments. It also appears that a guardian had been appointed for this mentally ill veteran prior to his "commitment" to the Veterans' hospital. Obviously, 38 U.S.C. § 450 governed the reversion of the unexpended benefit payments. The case is readily distinguishable from the case at bar where Warpouske's estate in controversy was derived from his deceased brother's estate. Again no guardian was appointed until after Warpouske was transferred to the Veterans' hospital and then only for his estate and not for his person. Nor was there ever any order of court directing Warpouske's transfer or commitment to the Veterans' hospital.

Cited also by petitioner is *In re Skriziszouski's Estate*, (1955) 382 Pa. 634, 116 A. (2d) 841. Except for $50, the entire estate consisted of pension benefits. There is nothing in the case to show that the deceased had not validly been confined or committed to the veterans' facility where he died. The narrow question was whether the commonwealth was an "heir." The case is indeterminative as an authority for the self-operation of the statute.

The view that § 17-17j are self-executing as dispensing with probate was severely criticized in *United States v. Security-First National Bank of Los Angeles*, 130 F. Sup. 521. The court pointed out that probate and the determination of heirship are matters of state and not federal procedure and that under the Tenth Amendment

of the Federal Constitution such powers are not delegated to the United States but are reserved to the states.

While the cases cited by petitioner may seem to lend support to the thesis of the self-operating effect of the statute, an analysis dispels their structure. In them it appears that courts apparently failed to take into consideration the important distinction in the basic theories underlying the respective provisions of 38 U.S.C. 17-17j and 38 U.S. C. § 450. On the other hand, the great majority of the cases rest their decisions under 38 U.S.C. §§ 17-17j upon contract. Here the contractual nature of the statute intended by Congress may be garnered not only from the language of the Act itself but is found clearly expressed in the legislative history of the Act.

(4) *Administrative practice.* The administrative practice of the Veterans' Administration over the years, in conformity with the statute, lends support to the interpretation of the statute as contractual in its operation. The admission forms to be executed by veterans upon their admission to a veterans' facility have contained an express agreement to or acknowledgment of the provisions of the statute concerning the vesting of the veteran's personal property in the United States upon his death in the facility intestate and without heirs, as is exemplified by the agreement forms set forth in the footnotes of petitioner's brief on writ of certiorari at pages 8 and 22.

Neuropsychiatric patients in Veterans' Facilities.

It is urged that because of the great many veterans admitted to veterans' facilities each year suffering from

neuropsychiatric impairments Congress intended the Act to be self-operating rather than contractual in nature. The intention of Congress in enacting this legislation is, of course, unmistakably shown by its legislative history as set forth in 87 Congr. Rec. 5202-5204, supra, thus removing the question of the legislative intent from the realm of construction. Again, because the great majority of mentally incompetent veterans dying in a veterans' facility are survived by heirs, the Act would not be applicable to them. Also, of such mentally incompetent veterans, in all probability, only a comparative few would be possessed of estates. Of these, no doubt, the greater number would be under a general or personal guardianship or would have been committed to the veterans' facility pursuant to some commitment order of court. Only in unusual cases, such as in the Warpcuske case at bar, would a mentally incompetent veteran possessed of a sizeable estate die in a veterans' facility intestate and without heirs and without a commitment order of court or personal or general guardian to act for him in his admission to the veterans' facility.

II

Inasmuch as the provisions of 38 U.S.C. §§ 17-17j are contractual, the question whether Congress can enact a self-operating statute in the area of veterans' estates, unhampered by the provisions of the Fifth and Tenth Amendments of the Constitution, becomes moot and hypothetical.

Petitioner has presented as its second question the query whether Congress can constitutionally provide for

the automatic vesting of a veterans' personal property, upon his death intestate and without heirs in a veterans' facility, as a condition to the furnishing of care or treatment to him in the facility.

In view of the fact that it clearly appears that the Act was intended to operate contractually, the question propounded as to the power of Congress to provide self-executing legislation becomes moot and hypthetical. We understand that it is the considered practice of this Court not to pass upon abstract, hypothetical or contingent questions: *Alabama State Federation of Labor v. McAdory*, 325 U.S. 450, 461, 89 L. Ed. 1725, 1734, and cases cited.

However, the right to pass laws regulating probate and the succession to decedents' estates has traditionally been recognized as a power reserved to the states by the Tenth Amendment of the Constitution. *Mager v. Grima*, 49 U.S. 490, 493, 12 L. Ed. 1168; and see *United States v. Security-First National Bank of Los Angeles*, supra (130 F. Sup. at 523). While the Tenth Amendment has all but joined the ranks of the Ninth Amendment as a forgotten amendment, yet it remains an abiding provision in that document on equal footing with its other provisions. Though Congress in the exercise of its granted powers may use all appropriate means plainly adapted to that end (*McCulloch v. Maryland*, 4 Wheat. 316, 421), the Supremacy clause is not boundless and the Tenth Amendment was expressly added to the Constitution for the purpose of reserving certain powers to the states.

Concerning the Fifth Amendment, the Oregon court

referred to *Heiner v. Donnan*, 280 U.S. 312, 76 L. Ed. 772, in which a statutory conclusive presumption was regarded as a taking of property violative of the Amendment and an attempt by legislative fiat to enact into existence a fact not actually existing. After discussion of the presumption and the nature of 38 U.S.C. 17-17j, the Oregon court observed that Congress did not intend to apply the conclusive presumption to appropriate the property of a helpless veteran in a situation as here presented (R. 42-44). In view of the contractual nature of the statute, the "conclusive presumption" provision does not become operative as to mentally incompetent or incapacitated veterans unable to contract and who are not under general or personal guardianship or committed to the Veterans' facility by an order of court. While under the circumstances no Fifth Amendment problem may be involved, the court was nevertheless correct in its conclusion that the presumption was not applicable.

Since the provisions of 38 U.S.C. 17-17j were intended to be contractual in their operation and not operative as to mentally incompetent or incapacitated veterans unable to contract, the question whether Congress can constitutionally provide for the automatic vesting of an incompetent veteran's property by a self-executing statute becomes moot.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the decision of the Oregon Supreme Court should be affirmed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

No. 329.—October Term, 1960.

United States, etc., et al., Petitioners, v. Oregon. } On Writ of Certiorari to the Supreme Court of Oregon.

[May 29, 1961.]

Mr. Justice Black delivered the opinion of the Court.

Adam Warpouske, an Oregon resident, died in a United States Veterans' Administration Hospital in Oregon without a will or legal heirs, leaving a net estate composed of personal property worth about $13,000. Oregon law provides that such property shall escheat to the State.[1] A United States statute, on the other hand, provides that when a veteran dies without a will or legal heirs in a veterans' hospital, his personal property "shall immediately vest in and become the property of the United States as trustee for the sole use and benefit of the General Post Fund . . . ."[2] In reliance upon these provisions of their respective statutes, both the State of Oregon and the Government of the United States filed claims for Warpouske's estate in the Oregon probate court having jurisdiction of the matter.

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[1] Ore. Rev. Stat., § 120.010 provides: "Immediately upon the death of any person who dies intestate without heirs, leaving any real, personal or mixed property, interest or estate in this state, the same escheats to and vests in the state, subject only to the claims of the creditors and as provided in ORS 120.060 to 120.130; and the clear proceeds derived therefrom shall be paid into and become a part of the Common School Fund of this state and be loaned or invested by the State Land Board, as provided by law."

[2] 38 U. S. C. § 17.

Recognizing that the federal statute, if applicable and valid, would make the claim of the United States paramount, the State attacked the Government's reliance upon that statute on two grounds: first, it urged that the federal statute did not apply to this case on the theory that its provisions depended upon the Government's having made a valid contract with the veteran prior to his death and that Warpouske had made no such contract because he had been mentally incompetent to do so when he entered the hospital and at all times thereafter up to his death; and, secondly, it urged that the federal statute, even if applicable, was invalid because it pertains to the devolution of property, a matter contended to have been wholly reserved to the States by the Tenth Amendment.

After hearings, the probate court found as a fact that Warpouske had been unable to enter into a valid contract with the Government because of his mental incompetence. That court then accepted the State's interpretation of the federal statute as requiring a valid contract as a prerequisite to its application and concluded that since such a contract could not, in this case, have been made, the State was entitled to Warpouske's property by virtue of its escheat law. On appeal, the State Supreme Court affirmed on the same grounds.[3] Because of the importance of this question of federal statutory construction and an alleged conflict between this decision and decisions previously made by other state courts of final jurisdiction,[4] we granted certiorari.[5]

Since we accept the findings of the two state courts that Warpouske could not and did not enter into a con-

[3] 70 Ore. 1267, 352 P. 2d 539.

[4] The conflict alleged is with the decisions in *Skriziszouski Estate*, 382 Pa. 634, 116 A. 2d 841; and *In re Gonsky's Estate*, 79 N. D. 123, 55 N. W. 2d 60.

[5] 364 U. S. 877.

tract to leave his property to the United States, the crucial question is whether the Government can prevail in the absence of such a contract. We hold that it can on the grounds that the federal statute relied upon does not require a contract and that this statute does not violate the Tenth Amendment.

The controlling provision was passed in 1941 as an amendment to the Sundry Appropriations Act of 1910.[6] The 1910 Act quite plainly and unequivocally provided that the admission of an applicant to a veterans' home should "be and constitute a valid and binding contract between such applicant and the Board of Managers of said home that on the death of said applicant while a member of such home, leaving no heirs at law nor next of kin, all personal property owned by said applicant at the time of his death, including money or choses in action held by him and not disposed of by will . . . shall vest in and become the property of the said Board of Managers for the sole use and benefit of the post fund of said home . . . ." The contractual nature of these provisions of the 1910 Act was clear and, indeed, we expressly recognized that fact when the question of the validity of the Act was brought before this Court.[7]

The 1910 Act was greatly amplified, however, by the amendments adopted in 1941 [8] and the central provision

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[6] 36 Stat. 703, 736.

[7] "In passing the Act of June, 1910, Congress merely directed the terms and conditions under which veterans, consistently with state law, can obtain admittance to Homes built, maintained and operated by the government for the benefit of veterans. Homes for the aged, needy, or infirm, in return for the benefits bestowed by them, generally receive some benefit from any property or estates of their members." *United States* v. *Stevens*, 302 U. S. 623, 627.

[8] 55 Stat. 868, 38 U. S. C. § 17 *et seq.*

of the Act, quoted above, was significantly changed. Section 1 (1) of the new Act restates this provision without reference to the word "contract," providing simply that when a veteran dies "while a member or patient in any facility, or any hospital while being furnished care or treatment," all his personal property "not disposed of by will or otherwise, shall immediately vest in and become the property of the United States as trustee for the sole use and benefit of the General Post Fund . . . ." [9] The Act then goes on to supplement this basic provision with other provisions that are drawn in the language of contract. But these provisions must be read in the context of § 1 (2) of the Act which provides that the death of a veteran in a veterans' hospital "shall give rise to a conclusive presumption of a valid contract." [10] Read in this context, the language of contract which appears in these other provisions of the Act is not at all inconsistent with the provision for automatic vesting without a contract in § 1 (1). Quite the contrary, it seems plain to us that these "contractual" provisions were included in the Act for the purpose of reinforcing rather than detracting from the provisions of § 1 (1)—the thought apparently being that there was some chance that the Act would be attacked as unconstitutional and that it would consequently be advisable to include alternative bases upon which it could be upheld.[11]

This natural construction we give to § 1 (1) makes it fit well in the pattern of legislation dealing with this sub-

[9] 38 U. S. C. § 17.

[10] 38 U. S. C. § 17a.

[11] These fears doubtless arose, in part at least, from the fact that the Circuit Court of Appeals had, in the *Stevens* case, *supra*, declared even the milder provisions of the 1910 Act unconstitutional under the Tenth Amendment, *Stevens* v. *United States*, 89 F. 2d 151, a holding ultimately reversed by this Court.

ject. The solicitude of Congress for veterans is of long standing.[12] Veterans' pensions, homes, hospitals and other facilities have been supplied on an ever-increasing scale. Many veterans, as did the deceased veteran here, have had to depend upon these benefits for long periods of their lives. Warpoueke, for example, appears to have spent more than ten years of his life, at various intervals from time to time, in veterans' homes and hospitals throughout the country. These were the only homes he had at those times. The congressional plan here is that whatever little personal property veterans without wills or kin happen to leave when they die in veterans' homes and hospitals should be paid into the General Post Fund, to be used for the recreation and pleasure of other ex-service men and women who have to spend their days in veterans' homes and hospitals. This idea was expressed by Representative Jennings during the discussion of the 1941 Act on the floor of the House: "And would it not be much better to let that money go into a fund that would inure to the benefit of other veterans than to let . . . it go into a fund under the escheat laws of [a] State?" [13]

Having concluded that the provisions of § 1 (1) are clear and unequivocal on their face, we find no need to resort to the legislative history of the Act.[14] Since the State has placed such heavy reliance upon that history, however, we do deem it appropriate to point out that this history is at best inconclusive. It is true, as the State points out, that Representative Rankin, as Chairman of the Committee handling the bill on the floor of the House,

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[12] See the Brief History of Legislation Pertaining to Veterans' Benefits, 38 U. S. C. A. 1.

[13] 87 Cong. Rec. 5203–5204.

[14] Cf. *United States* v. *Bowen*, 100 U. S. 508, 513–514; *National Home* v. *Wood*, 299 U. S. 211, 216.

expressed his view during the course of discussion of the bill on the floor that the 1941 Act would not apply to insane veterans incompetent to make valid contracts.[15] But such statements, even when they stand alone, have never been regarded as sufficiently compelling to justify deviation from the plain language of a statute. They are even less so here for there is powerful countervailing evidence as to the intention of those who drafted the bill. The bill was drawn up and sent to the Speaker of the House in the very form in which it was passed by the Veterans' Bureau itself.[16] And that Bureau, we are told, has consistently interpreted the 1941 Act as making the sanity or insanity of a veteran who dies in a veterans' hospital entirely irrelevant to the determination of the Government's rights under the Act.

We see no merit in the challenge to the constitutionality of § 1 (1) as construed in this natural manner. Congress undoubtedly has the power—under its constitutional powers to raise armies and navies and to conduct wars—to pay pensions, and to build hospitals and homes for veterans. We think it plain that the same sources of power authorize Congress to require that the personal property left by its wards when they die in government facilities shall be devoted to the comfort and recreation of other ex-service people who must depend upon the Government for care. The fact that this law pertains to the devolution of property does not render it invalid.[17]

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[15] 87 Cong. Rec. 5203.

[16] See H. R. Rep. No. 609, 77th Cong., 1st Sess., pp. 1-2.

[17] See, *e. g.*, *Kolovrat* v. *Oregon*, — U. S. —. This was also implicit in the holding in *United States* v. *Stevens*, 302 U. S. 623. See n. 11, *supra*. Cf *Hines* v. *Lowery*, 305 U. S. 85, in which this Court rejected the contention that the Federal Constitution does not confer any authority upon Congress to deal with mental incompetents.

Although it is true that this is an area normally left to the States, it is not immune under the Tenth Amendment from laws passed by the Federal Government which are, as is the law here, necessary and proper to the exercise of a delegated power.[15]

The judgment of the Oregon Supreme Court is reversed and the cause is remanded for further proceedings not inconsistent with this opinion.

Reversed

[15] See, *e. g.*, *Case* v. *Bowles*, 327 U. S. 92; *Oklahoma* v. *Atkinson Co.*, 313 U. S. 508; *United States* v. *Darby*, 312 U. S. 100.

SUPREME COURT OF THE UNITED STATES

No. 329.—October Term, 1960.

United States, etc., et al., Petitioners, v. Oregon.	On Writ of Certiorari to the Supreme Court of Oregon.

[May 29, 1961.]

Mr. Justice Douglas, with whom Mr. Justice Whittaker concurs, dissenting.

I do not see how this decedent's estate can constitutionally pass to the United States. The succession of real and personal property is traditionally a state matter under our federal system. *Mager* v. *Grima*, 8 How. 490, 493–494. That tradition continues. *United States* v. *Burnison*, 339 U. S. 87, 91–92; *Clark* v. *Allen*, 331 U. S. 503, 517; *Irving Trust Co.* v. *Day*, 314 U. S. 556, 562; *Lyeth* v. *Hoey*, 305 U. S. 188, 193. An individual can contract away his assets—making the United States the promisee—and the contract will be enforced, provided it is valid under state law. *United States* v. *Stevens*, 302 U. S. 623, 627. It may be that an action in *quantum meruit* would lie against the estate of a person who, though utterly incompetent as Adam B. Warpouske concededly was, received treatment at a federal hospital.[1] It may be that the United States could appropriate all unexpended funds from federal pensions or federal insurance policies in exchange for the services rendered an incompetent. See *United States* v. *Hall*, 98 U. S. 343; *Wissner* v. *Wissner*, 338 U. S. 655; cf. *Miller Music Corp.* v. *Daniels, Inc.*, 362 U. S. 373. The power of Congress to

[1] See Restitution, Restatement of the Law, Am. L. Inst. (1937), § 114; 5 Corbin on Contracts (1951) § 1109.

the Veteran's Administration is authorized to administer the estate, paying creditors' claims, if presented within designated times, and granting them the preference and priorities prescribed by local law. § 4.

We know that while the Act is based on "a conclusive presumption" that a contract to assign the property to the United States was made, there was in fact no contract in this case. During the period of Warpouske's hospitalization—from March 1, 1956, to March 19, 1956, the day of his death—he was either comatose or semicomatose.[3] We deal with a presumption that is contrary to the fact (cf. *Tot v. United States*, 319 U. S. 463). We have then a case involving the power of Congress to provide for the administration of the estate of a deceased veteran where he has in fact made no assignment of it to the Federal Government. To what power is that necessary and proper?

Only recently we warned against an expansive construction of the Necessary and Proper Clause. We stated that it is "not itself a grant of power but a *caveat* that the Congress possesses all the means to carry out" the powers specifically granted. *Kinsella v. Singleton*, 361 U. S. 234, 247. Powers not given "were reserved," as Madison said. VI Writing of James Madison (Hunt ed.) 390. And "no powers were given beyond those enumerated in the Constitution, and such as were fairly incident to them." *Ibid.*

Veterans or anyone else may make the United States a beneficiary of their estate, absent a state law that precludes it. See *United States* v. *Burnison*, *supra*. But if it is "fairly incident" to raising and support-

[3] Adam Warpouske spent a large part of his life in Veterans' Hospitals, especially during the years from 1930 to 1945. (The record also shows that he received care in the facilities of various states.) But the claim to administer his personal property arises solely from "the fact of death" in a Veteran's Hospital.

ing armies and navies and conducting wars for the United States to take over the administration of the personal property of veterans who die intestate. I see no reason why Congress cannot take over their real estate too. I see no reason why, if the United States can go as far as we allow it to go today, it cannot supersede any will a veteran makes and thus better provide for the comfort, care, and recreation of other ex-service men and women who are dependent on the United States for care. And the more money the Federal Government collects for veterans the better the care they will receive. No greater collision with state law would be present where Congress took realty or displaced an entire will than here. Oregon's law providing for escheat is as explicit as her law providing for the administration of the estates of deceased people. If a contract between the United States and an utterly incompetent person can be conclusively presumed to exist when the incompetent dies intestate, it can be where he leaves a will. If it can be conclusively presumed in case of a veteran, it can be conclusively presumed in case of any federal employee, in case of any federal officeholder, in case of any federal pensioner. Of course Congress cannot be expected to use this vast new power to the extreme. But we—unlike England—live under a written Constitution that limits powers, not entrusting the Constitution to the conscience of the legislative body.

The Tenth Amendment does not, of course, dilute any power delegated to the national government. That is one face of the truism that runs through our decisions. *United States* v. *Darby*, 312 U. S. 100, 124; *Oklahoma* v. *Atkinson Co.*, 313 U. S. 508, 534; *Case* v. *Bowles*, 327 U. S. 92, 101. But when the Federal Government enters a field as historically local as the administration of decedent estates, some clear relation of the asserted power to one of the delegated powers should be shown. At times the

exercise of a delegated power reaches deep into local problems. *Wickard* v. *Filburn*, 317 U. S. 111, allowed the commerce power to extend to home-grown and home-used wheat, because total control was essential for effective control of the interstate wheat market. But there is no semblance of likeness here. The need of the Government to enter upon the administration of veterans' estates—made up of funds not owing from the United States—is no crucial phase of the ability of the United States to care for ex-service men and women or to manage federal fiscal affairs.

Today's decision does not square with our conception of federalism. There is nothing more deeply imbedded in the Tenth Amendment, as I read history, than the disposition of the estates of deceased people. I do not see how a scheme for administration of decedents' estates of the kind we have here can possibly be necessary and proper to any power delegated to Congress.

Raising money by borrowing or by taxing are explicitly provided for in Art. I, § 8. Raising money by appropriating assets of those who have a relationship with the Federal Government (as most people do today) is not among the enumerated powers. At bottom of the present statute, as the Court points out, is a desire to make those who use a Veteran's Hospital help finance its operations.[4] Congress can set rates for services rendered; it

[4] The inspiration for this law, as seen from the legislative history (H. R. Rep. No. 609, 77th Cong., 1st Sess.; S. Rep. No. 900, 77th Cong., 1st Sess.) was the Veterans' Administration, a fact which perhaps makes relevant the following observation: 'Politicians and taxpayers have assumed (with occasional phases of doubt) that a rising total in the number of civil servants must reflect a growing volume of work to be done. Cynics, in questioning this belief, have imagined that the multiplication of officials must have left some of them idle or all of them able to work for shorter hours. But this is a matter in which faith and doubt seem equally misplaced. The fact is that the number of the officials and the quantity of the work are not related to

can obtain from patients assignments of assets to the United States; it can induce and encourage people to make these hospitals beneficiaries under their wills. But I do not see how it is possible for the United States to take a man's property without his consent when the United States is not a creditor in the accepted sense. The only constitutional way in which that can be done is by taxation or by condemnation. This law as applied is indeed a levy that has no support in the Constitution; and it makes a serious inroad on the Tenth Amendment. With all deference, I dissent.

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each other at all. The rise in the total of those employed is governed by Parkinson's Law and would be much the same whether the volume of the work were to increase, diminish, or even disappear. The importance of Parkinson's Law lies in the fact that it is a law of growth based upon an analysis of the factors by which that growth is controlled." Parkinson, Parkinson's Law (1957), pp. 3–4.